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5TH SESSION, 37TH PARLIAMENT

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TUESDAY, MAY 11, 2004

Introductions by Members

The House met at 2:04 p.m.

Tributes

PAUL TENNANT

Mr. Speaker: Good afternoon, hon. members. It is my pleasure to introduce today Dr. Paul Tennant, who is with us in the members' gallery. Dr. Tennant, a recently retired political science professor from the University of British Columbia, was the academic director of the British Columbia legislative intern program for 13 years. As academic director, he provided leadership to the annual six-month program and the many legislative interns who benefited from his years of political knowledge. He is joined today by Dr. Patrick Smith, the new academic director, and Dr. Norman Ruff. I would ask you to please make them feel welcome.

[1405]

Hon. G. Abbott: I'd like to join with you in introducing, actually, three of my former professors at UBC and UVic: Norm Ruff, Paddy Smith and Paul Tennant. Everything I know about local governments I learned at the knee of Paul Tennant. I can only imagine what I might have been able to do if I had taken provincial politics from him, but I didn't, regrettably.

It is a good time to salute, I think first of all, the efforts that Paul Tennant has made, especially with respect to the legislative internship program. That was something I benefited from close to 30 years ago in the inaugural internship program. Paul has done a great job. On behalf of all of us who have enjoyed that program and been a part of that program, thank you very much.

J. MacPhail: I join with you to acknowledge the.... Well, I was going to call them the three wise men until I found out that they taught the member for Shuswap, so I'll have to think of something else. But really, it is....

Interjections.

J. MacPhail: I'm trying to insult the minister, not them. I'm just kidding. I am. I'm kidding.

But I do want to join with everybody to say that Dr. Tennant has served the internship program so well through all of those years and has, through that program, served us as MLAs. I can only speak with the experience of the last three years and say that we would have not survived without the program. Thank you all, and good luck to Dr. Smith in the future.

J. Kwan: Just to counterbalance the member for Shuswap, I must say that one of the three wise men taught me when I was in university — to make sure and to verify, in fact, that they are non-partisan in that sense. I, too, would like to welcome them all and thank them for the good work they do in our community and especially with the internship program.

J. Kwan: I have the pleasure to introduce 25 grade 7 students. Who knows? They might be aspiring politicians. These are 25 grade 7 students from St. Joseph's school, and they're accompanied by five adults, including Mr. Don MacDougall, their teacher, and Mr. Mike Boreham, who is their principal.

Last but not least, I would like to acknowledge — and I see in the gallery — Aileen Randall visiting us today. She is the widow of the late Fred Randall. Aileen has been certainly a good friend to the opposition caucus, to myself and to my colleague from Vancouver-Hastings. I would like the House to please welcome all these special guests.

Tributes

PAUL TENNANT

Hon. G. Campbell: I just couldn't sit here and not stand and say thank you to Paul Tennant for what he has done for the province in many, many ways. I first met Dr. Tennant when he was running for office. Let me just explain to people that the fact that you study politics doesn't mean you have a clue about how to get elected.

Hon. G. Collins: And vice versa.

Hon. G. Campbell: And vice versa, I must say. Yeah, right. I do want to say this, though. Paul Tennant is someone who has given the spirit of public life to people throughout this province. You talk with young people who he's touched in his career as a professor, and he was willing to share not just his commitment to public life but his passion for public life. Regardless of the party that people may have gone to from that foundation he gave, I think he has made a significant contribution to all of us in British Columbia. I want to say thank you for that contribution. Thank you for that commitment, and let's hope we have many more Paul Tennants in the future of our province.

Introductions by Members

B. Kerr: I'm going to be speaking on the Women of Distinction Awards in just a few minutes, so I'd like to introduce two special guests in the gallery today. They're Veronica Osborn, the 2004 Women of Distinction Council chair, and Brenda Parkinson, 2004 program chair. I'd ask that all members of the House please recognize and welcome these women today.

**Statements
(Standing Order 25B)**

WOMEN OF DISTINCTION AWARDS

B. Kerr: The few minutes went by very quickly, Mr. Speaker.

[1410]

It gives me great pleasure to stand on the floor of this House to recognize the tenth annual Victoria Women of Distinction Awards. Sponsored by and a fundraiser for the YM-YWCA of Greater Victoria, the event not only honours the inspirational women of Vancouver Island but also supports women, children and families and their involvement in the programs and services of the Y.

Since the first awards night was held in 1995, the Victoria Women of Distinction has honoured 667 women as nominees and 91 as award recipients. More than 6,700 people have attended the event over the years, and over \$370,000 has been raised for the YM-YWCA of Greater Victoria.

This year 73 women from all walks of life on Vancouver Island have been nominated in ten categories. Individuals and organizations have nominated these women for their achievements, vision and inspiration to others. The 2004 categories are lifetime achievement; arts, cultural and heritage; communications; community legacy; education, training and development; health, sports and fitness; neighbourhood enhancement; science, information technology and research; workplace innovation; and young women of distinction.

Tomorrow a gala awards night will be held at the Victoria Conference Centre, at which time the organizers will shine the light on these exceptional women, ten of whom will become recipients of a prestigious Women of Distinction award.

KIWANIS CYCLING TOUR FOR JUVENILE DIABETES RESEARCH

G. Trumper: Coming up at the end of this month is the Kiwanis cycling tour to raise money for juvenile diabetes research. The event will kick off in Victoria on May 30 and will finish in Port Alberni on June 4. The group of ten to 12 riders, led by Robin Nadick, will leave the Oak Bay Kiwanis Club in Victoria after a pancake breakfast on May 30. They will ride up to Duncan, Nanaimo, Parksville-Qualicum, Courtenay-Comox, Powell River and Campbell River before they finish in Port Alberni.

The group's mandate is to raise awareness of type 2 diabetes in children. To do this, they have made several presentations in elementary schools encouraging healthy lifestyles and prevention. It is the mandate of Kiwanis to serve the children of the world.

This type of diabetes is showing up in children as young as eight years old. Kiwanis is doing what it can do to encourage parents and children to make healthy lifestyle choices. This type of diabetes is preventable, and proper nutrition and regular exercise are two of the easiest ways to prevent the onset of the disease.

The cyclists are not only raising awareness, but they are raising money, as well, for research and for sending kids with diabetes to summer camp. Some of the major corporate sponsors include the Royal Bank, Dennis Jonsson Motor Products, Safeway and Weyer-

haeuser in Port Alberni. I would encourage everyone in the House to attend the pancake breakfast at Oak Bay Kiwanis Club at 8 a.m. on May 30 and show your support for this very important cause.

CANADIAN WOMEN'S WRESTLING TEAM

D. MacKay: I would remind the House that the 2010 Olympic Games aren't going to happen for another six years, so I'd like to talk more about the 2004 Olympic Games, because I have an interesting story for you.

For the first time ever, the 2004 Athens Olympic Games will include women's freestyle wrestling. Canada qualified women in each of the four weight categories. Lindsay Belisle was the six-time senior national champion. She was the gold medallist in 2003 at the World Cup. She was Canada's first-ever female champion in this competition. The Canadian Amateur Wrestling Association named her the female wrestler of the year for 2003.

Lindsay grew up in the Kispiox Valley, a rural community north of Hazelton. She attended school in Kispiox and graduated from the Hazelton Secondary School and Douglas College. She is a student in the UBC faculty of education.

Lindsay will represent Canada at the 2004 Olympic Games, but I'm not finished yet. Carol Huynh, who was born and educated in Hazelton, is also going to the 2004 Olympic Games as an alternate for the Canadian women's wrestling team. Carol also has a distinguished list of wrestling victories. Lindsay Belisle beat Carol Huynh during the Canadian qualifier.

I would ask the House to join me as we wish these athletes our best as they compete for Canada in Athens later this summer.

[1415]

Mr. Speaker: That concludes members' statements.

Oral Questions

CANADA HEALTH ACT AND SURGERY ON LIBERAL MLA

J. MacPhail: Yesterday the Minister of Health insisted that the member for Chilliwack-Kent would have to file a complaint on himself for the government to investigate whether his surgery was in violation of the Canada Health Act, so I doubt very much that that will happen.

Charging facility fees for medically necessary procedures violates the Canada Health Act, but it also violates provincial law. Section 17 of the Medicare Protection Act specifically prohibits charging facility fees for medically necessary procedures, but the act also gives the government, through the Medical Services Commission, the authority to investigate abuses and ensure that private surgical outfits don't charge patients directly for services.

Yesterday the Minister of Health dodged the question. Will he admit that charging facility fees for medically necessary procedures violates provincial law and that he has a legal responsibility to investigate to ensure that private surgical outfits operate within the law?

Hon. C. Hansen: The big challenge that governments across Canada have is around the lack of definition flowing from the Canada Health Act for the terms "medically necessary" and "medically required." That is something that has been raised with us. Certainly, there have been indications from the federal government that they are prepared to address that issue in the coming months, and we look forward to that.

Mr. Speaker: The Leader of the Opposition has another question.

J. MacPhail: Well, the Minister of Health is surely backing away from the position that he took just months ago about how it was his responsibility. The reason for the law is to prohibit taxpayers subsidizing private surgeries for medically necessary procedures performed on people who can afford to pay the extras. That's why those acts exist. This government is reneging on its responsibilities, turning a blind eye to the violations of its own laws.

Last year a patient was charged a \$6,125 facility fee for sinus surgery at the False Creek Surgical Centre, the very centre that the member for Chilliwack-Kent used. Her doctor then billed the Medical Services Plan for \$882.47, the full amount payable for those services under the Medical Services Commission payment schedule — a clear violation of the Medicare Protection Act. When the patient complained, the Health ministry told her to take it up with the False Creek Surgical Centre. This minister's ministry said they would check into it as well. Nothing has happened.

Mr. Speaker: Order, please. Order. Hon. member, time to put the question now.

J. MacPhail: Yes. Will the minister explain why his government is allowing private surgical centres like False Creek to operate in clear violation of the law and he's doing nothing to stop it, even though his bureaucrats said they would?

Hon. C. Hansen: This member's memory is rather short. Last year B.C. was actually docked transfer payments from the federal government because of procedures that took place while they were in office. It actually was a front-page story of a woman from Prince George who came down to Vancouver to have surgery performed at the False Creek Surgical Centre.

Interjections.

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

Hon. C. Hansen: What I said to the member yesterday and what I said in the media interviews that I did yesterday, which I know the member listened in on intensely, is that we follow up on all patient complaints that come to us. If a patient feels that there has been a violation of the Canada Health Act, we do open files on all of those. We do follow up on them. We encourage patients to get reimbursement if they feel they were falsely charged for services by any facility in this province. All of those are pursued.

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

J. MacPhail: The minister says that because we have a law in place — the best in Canada — and the law is enforced, somehow that's the opposition's fault. The fact of the matter is that the law is now not being enforced by this government at all, and I just demonstrated that with a case that his government has done nothing about.

Let's look again at the case of the member for Chilliwack-Kent.

Interjections.

Mr. Speaker: Order, please.

[1420]

J. MacPhail: The member has put the facts — his own facts — on his website. He was charged a large fee for an injury that caused him debilitating pain, but he didn't pay the whole cost. I'm certain we all agree that the member was in pain, and we can understand his motivation. But what I can't understand is why the Minister of Health would not be concerned that his surgery is part of a larger abuse of the Medical Services Plan, violating provincial law.

Again, to the minister: will he comply with the laws of this province and take steps to investigate whether or not the surgery performed in the case of the member for Chilliwack-Kent by False Creek Surgery Centre violated provincial law?

Hon. C. Hansen: If the member has information that somehow a law has been violated, I would be pleased if she provided that to me, and I would be pleased to have that looked at. The practice in this province that has been in place from, I believe, when she was the Health minister in this province is that we will respond to patient complaints. If a patient feels that they....

Interjections.

Mr. Speaker: Order, please. Order. Let us hear the answer.

Hon. C. Hansen: If a patient feels there may perhaps be a violation of the law, then that patient can raise that with us, and we will investigate.

FACILITY FEES FOR PRIVATE SURGERIES

J. Kwan: The minister knows full well that two examples have now been brought to his attention, and he has done nothing to address the issues. Let us be clear about what is at stake. Private surgical facilities are double-billing. They charge the public system for their surgery's services; then they charge patients a huge fee to get into the door.

Let me quote again from the 1995 federal letter on facility fees: "Facility fees are objectionable because they impede access to medically necessary services. Moreover, when clinics which receive public funds for medically necessary services also charge facility fees, people who can afford the fees are being directly subsidized by all other Canadians."

Again to the Minister of Health: why is he forcing average taxpayers to subsidize private surgeries for people who can afford huge facility fees in violation of the Canada Health Act and in violation of his own Medicare Protection Act?

Hon. C. Hansen: I can only repeat that if any patient in this province feels they have been inappropriately charged fees that may be in violation of the Canada Health Act, they can raise that issue. We will investigate. We will open a file. We may encourage them to go back to the physician to get reimbursement of those moneys, but we will make sure that those are followed up on.

SKILLS TRAINING
REQUIREMENTS IN B.C.

E. Brenzinger: For decades B.C. has been the blueprint of the trades training curriculums across Canada. Now the changes — namely, the stripping of the necessary requirements needed for the apprenticeship training and journeypersons status — that this government implemented mean that the Red Seal endorsement has become an option, not a requirement, and is therefore meaningless in B.C. Other jurisdictions in Canada are questioning the capabilities of the B.C. trade certificate holders.

My question is to the Minister of Advanced Education. Why was the Industry Training and Apprenticeship Commission, or ITAC, not given an opportunity to meet its full mandate before this government arbitrarily changed the responsibility of overseeing the apprenticeship process to the Industry Training Authority, or ITA?

Hon. S. Bond: First of all, I think it's very interesting that this is the first time I've ever heard a concern expressed by that member about anything to do with skills or trades training in British Columbia. In fact, we have a system that....

Interjections.

Mr. Speaker: Order.

Hon. S. Bond: We've put a system in place that will begin to deal with trades training in this province in a flexible, responsible way as we look at the boom that British Columbia is now experiencing. Apprenticeship numbers are up in the province. Red Seal will stay in place in British Columbia.

[1425]

Just as recently as Friday we opened a brand-new spot for trades training excellence at Kwantlen University College in this province. We intend to move forward and provide the skilled workforce that British Columbia needs.

STATUS OF RAV LINE

G. Halsey-Brandt: My question is to the Minister of Transportation. Despite extensive evaluation of the RAV line — all of which ensured the economic viability, the environmental benefits and the ridership of the line — as we know, the vote taken last Friday on whether or not to build the RAV line failed.

There are still, however, hundreds of thousands of people in Richmond and Vancouver who've been waiting patiently for years to see this transit link built and still want to see the project happen. The best and final offer has not yet been tabled, yet the people who voted against the project were concerned about cost overruns and taxpayer risk. Can you tell my constituents what the facts are, and most importantly, where do we go from here?

Hon. K. Falcon: As Minister of Transportation I will tell you that I'm disappointed for a couple of reasons. I'm disappointed, first, because I believe passionately that we need to invest in public transportation. We actually need to get people out of their cars and into public transit. If we don't provide a viable alternative, they won't.

Secondly, I think there was an opportunity for what I call a generational decision — a decision that those board members had the opportunity to make, which would have benefited our children and our grandchildren, would have had benefits for a cleaner environment and would have had benefits for a greener environment. Unfortunately, that opportunity was lost.

Interjection.

Hon. K. Falcon: You know, I hear the member opposite heckling. That's unfortunate, because it would have been helpful if the member opposite had been talking to some of her allies that voted against this. At the end of the day, we've lost an enormous opportunity for British Columbia to have a transportation alternative that would have moved hundreds of thousands of people efficiently and effectively.

In terms of your comment about cost, to the member from Richmond, all I can say is the real tragedy of this is that we never got to best and final offer stage, so we were never able to know and will never know what the real costs would have been and how many hun-

dreds of millions of dollars the private sector was prepared to invest in this program.

FACILITY FEES FOR PRIVATE SURGERIES

J. Kwan: Last year a patient did complain to this minister of having been charged a facility fee of over \$6,000, and this minister did nothing. Last year the government brought in legislation to crack down on this behaviour, supposedly, but then turned tail and ran. Given the minister's refusal to enforce laws already on the books, I guess that's no surprise.

An average two-income family of four making \$30,000 a year has seen their taxes go up by \$435 this year. Contrast that with a person making \$80,000 a year, who saw their taxes go down by \$221. Let's be clear about what's going on. Average taxpayers who cannot afford \$7,000 facility fees are paying more in taxes so that those who could afford those facility fees can bill the public system for private surgery. Those same taxpayers...

Interjections.

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

J. Kwan: ...are waiting longer than ever on the wait-list.

Mr. Speaker: Time for the question now, hon. member.

J. Kwan: To the Minister of Health, who's refused to take action to date. This is clear; the law is clear. How can the public have any confidence in this Minister of Health who refuses to protect health care for all British Columbians by wilfully allowing taxpayers to subsidize private health care?

Interjections.

Mr. Speaker: Order, please.

Hon. C. Hansen: I challenge the member to pull a document out of the library. It's called the budget report. It was actually brought in as the last budget report by the previous government, when the member for Vancouver-Hastings was the Minister of Finance. Look in the tables, in the charts in there, in terms of what low- and middle-income families would pay, and compare that to what they pay today in terms of taxes. You will realize...

Interjections.

Mr. Speaker: Order, please.

Hon. C. Hansen: ...and anyone who wants to do that and check that in their library will realize that there is more money in those people's pockets today. What is more important...

Interjections.

Mr. Speaker: Order, please.

Hon. C. Hansen: ...is the money that's been put into the health care system — an increase of \$2 billion over the last three years to help make sure that people can get access to the health care they need in this province.

Interjections.

Mr. Speaker: Order, please.

[1430]

Hon. C. Hansen: The biggest interruption that we have had in the delivery of surgeries in this province was the week before last...

Interjections.

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

Hon. C. Hansen: ...when a strike by the hospital...

Interjections.

Mr. Speaker: Order, please, on both sides of the House. Let us hear the answer.

Hon. C. Hansen: It was the week before last when 6,000 British Columbians were denied access to the surgeries they thought they were going to get because of a strike action that shut down those operating rooms throughout the province. There are 6,000 people who were denied access to the health care that they thought they were going to get, and that's the issue that we've got to be looking at fixing as we go forward.

REGIONAL PLANNING ISSUES AND RESPONSIBILITIES OF AGRICULTURAL LAND COMMISSION

R. Hawes: My question is to the Minister of Sustainable Resource Management. My community, Mission, is in the middle of a regional growth planning exercise, as are many of the cities within the Fraser Valley. As part of that exercise, they're trying to get some land released from the Agricultural Land Commission to promote intensive job creation. Five years ago the same requests that they are now going to be making were made when I was the mayor of the community I live in. The Agricultural Land Commission that was in place under the previous government told me and my council that we should perhaps think about buying up some subdivisions and tearing them down.

To the minister. Our new-era commitment says that we will be making the Agricultural Land Commission more responsive to regional needs. Has that taken

place? What, if anything, has been done to make the Agricultural Land Commission more responsive?

Hon. G. Abbott: As the member notes, local governments — whether they're regional districts or municipalities, of course — have local planning responsibilities.

Interjections.

Mr. Speaker: Order, please.

Hon. G. Abbott: The province, through the Agricultural Land Commission, through the agricultural land reserve....

Interjections.

Mr. Speaker: We'll continue when we have order in the chamber. Maybe you should start over.

Hon. G. Abbott: Thank you. I'd be pleased to, Mr. Speaker.

The province, through the Agricultural Land Commission and the agricultural land reserve, has responsibility for preserving agricultural land and for promoting agriculture in the province. There are about 4.75 million hectares of ALR land in the province. The province has leads on that.

I appreciate, actually, the Leader of the Opposition reminding me about Six Mile Ranch as a time when the needs of local government and provincial responsibilities didn't perfectly line up. It's a very good example, and I thank her for reminding me of it. Where those provincial and local responsibilities or interests don't line up perfectly, we work together to try to resolve them, as I know we are in respect of Maple Ridge.

In terms of making the commission more regionally responsive — because I think it is a very important element — we have, I am pleased to note, increased the regional panels from three to six. My understanding from local governments is that they feel very pleased — unlike back in the sad days of the NDP and Six Mile Ranch — that things are actually working reasonably well.

Interjections.

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

[End of question period.]

Tabling Documents

Mr. Speaker: Hon. members, I have the honour to present the Legislative Assembly Management Committee annual report, 2002-2003.

Orders of the Day

Hon. G. Collins: I call second reading of Bill 36.

[1435]

Second Reading of Bills

COMMUNITY, ABORIGINAL AND WOMEN'S SERVICES STATUTES AMENDMENT ACT, 2004

Hon. M. Coell: I move that Bill 36 be read for a second time now.

This act makes amendments to local government statutes for which my ministry is responsible in order to respond to some specific requests and issues identified on five different matters. These amendments reflect this government's commitment to local governments' autonomy and to ensuring that the legislation is flexible, clear and effective for local governments and their communities. This act includes amendments to fine-tune the development finance system.

B.C. communities are experiencing growth. This is welcome news and proof that more and more people are recognizing that our province is the best place in Canada to live. Community growth puts pressure on local governments to build new infrastructure and expand services. Our proposed amendments to the Local Government Act, Community Charter and the Vancouver Charter will increase responsiveness and equity in the development finance system by authorizing local governments to waive the exemption from development cost charges that exist for projects with fewer than four units, by authorizing local governments to set the threshold at which development cost charges become payable higher than the default of \$50,000 and also by authorizing local governments to use the money from capital reserve funds to temporarily finance capital projects.

These proposed changes are the result of the recommendations of the development finance review committee, a committee of local government, the development industry and provincial government representatives. These changes will make the development finance system more responsive to the needs of both developers and local government.

This act also includes amendments to the Vancouver Charter. These amendments respond to requests by the city of Vancouver. One of these amendments will clarify the scope of the charitable property tax exemption in light of a recent court decision. The amendment will ensure that charities that have a registered lease on a property owned by a charity benefit from that tax exemption.

Another amendment to the Vancouver Charter clarifies the size of the city of Vancouver's board of variance. You may recall that in 2003 we placed the authority to appoint the board of variance members where it belongs, with the city of Vancouver, rather than with the provincial government. This amendment keeps that intent while clarifying the number of members on that board.

This act also contains amendments to provide greater flexibility for regional districts to recover the costs of administrative-type services. Local govern-

ments need this flexibility so that cost recovery can meet the unique local needs — for example, so that they could divide the costs of a regional district administration building among members, based on the floor area of the building used for various purposes rather than on the more arbitrary basis of assessed values in properties. This increased flexibility is part of our government's demonstrated commitment to provide greater local autonomy and the authority to make local decisions that meet local needs.

Finally, this act makes further technical and housekeeping amendments to the Community Charter, Local Government Act and related legislation. These include legislating a number of clarification and correction amendments to the Community Charter that had, on an interim basis, been done by regulation. This fixes and will ensure the clear and effective operation of the Community Charter. We consulted with the Union of British Columbia Municipalities on the amendments in this act to ensure that there were no concerns.

I would ask members to lend their support to this worthwhile and necessary piece of legislation.

[1440-1450]

Motion approved.

Hon. M. Coell: I would move that Bill 36 be placed on the orders of the day for committal at the next sitting of the House after today.

Bill 36, Community, Aboriginal and Women's Services Statutes Amendment Act, 2004, read a second time and referred to a Committee of the Whole House for consideration at the next sitting of the House after today.

Hon. M. Coell: I move committee stage for Bill 42.

Committee of the Whole House

REAL ESTATE DEVELOPMENT MARKETING ACT

The House in Committee of the Whole (Section B) on Bill 42; J. Weisbeck in the chair.

The committee met at 2:54 p.m.

On section 1.

R. Stewart: I want to ask the minister several questions related to the way in which real estate marketing will now be handled and the way in which we've managed, I hope, to reduce some costs for residential real estate marketing.

I remember — and I bring to the minister's attention and to the attention of the House — being in this Legislative Assembly more than a dozen times over a decade and with at least half a dozen different ministers responsible for housing begging for the simple

changes that would permit, for example, the use of deposits for construction if they were insured.

[1455]

It was clear that we had everybody on our side on that one. We had consumer groups on our side. The last government was on our side. Everyone agreed that this is something that has to happen. It's something that ought to happen, and there's no good reason why we can't permit the developer to use deposits for the purposes of construction if he could ensure, essentially, that the deposits were safe in the event of default by the developer. I know that is now included in this bill.

I want to ask the minister to explain: how come this took a decade of the previous government and still no action, and why are we able to do it now?

Hon. G. Collins: Those are actually questions for sections 18 and 19. If members want to approach it in a more ad hoc way, I'm prepared to do that. If the member has time, okay. That's fine.

I'm not sure. Perhaps staff might have a better sense of why this took so long. I do know that as part of this government's attempt to embark upon a deregulation initiative across government, this type of legislation was moved forward as a change that could be undertaken in an attempt to meet the targets that were put there in our election platform of reducing the regulatory burden and ultimately the count by one-third in our first three years in office. In fact, most of the legislation that's come before the House this spring — or a great deal of it, anyway — deals with various deregulation initiatives in various ministries.

The rewrite of the Real Estate Act, of which this was part — and there's another bill we've introduced, which is the other part of the act — actually constitutes a fairly significant reduction in the regulatory burden. Committing to reduce that burden has triggered the rewrite of a number of pieces of legislation. This is one of them.

This was an issue, as the member mentioned, that has been out there. There's been a lot of support across the spectrum for this type of innovation that's contained in sections 18 and 19. Government felt it was an appropriate time to do it. It's done in other jurisdictions, and there's a way to do it which facilitates the use of those funds in the meantime and which also protects the consumers through an insurance process to make sure that those funds are secure.

R. Stewart: I thank the minister for those comments.

I want to explain that my main purpose for bringing them up now, rather than in 18 and 19, is because they're part of a general concern I've always had that if we can protect the consumer just as well while we get rid of the regulatory burden that is unnecessary and if we can make real estate marketing, if you will — the transfer of real estate from seller to buyer — as efficient as possible, we will save consumers money as long as the protections are always there.

I note, for example, on this one that we are now able to tell the consumers out there that they're just as protected as they used to be, but the money they're going to pay as deposit will actually be part of the process. It will continue to provide savings for them as it's being used during the construction process.

I think it's particularly important that with each one of these regulations that are deemed necessary to protect consumers — particularly consumers in the residential housing market that is as hot as it is today, for example — as we strive to make certain that consumers are protected, we at the same time make certain that none of the regulations that we're putting in place or that are already in place are creating an unnecessary burden. Each time we look at a regulation, we will ask: first of all, will it serve the need to protect consumers? Secondly, is there a simpler way to do that?

This one that I bring up as an example, section 18, provides for a way in which the cost to the consumer — the end cost of housing — can be lowered by a simple change in a regulation that makes it possible for the developer of a property to use the money he has received from purchasers for construction and thereby reduce the cost of his having to borrow during the construction process.

[1500]

Hon. G. Collins: I agree that this is a good innovation. It certainly provides greater flexibility and opportunities. I was asked by a member — I can't remember which member it was; some time ago, or in the last couple of days, anyway — whether or not developers would be required under the act to pay interest on the money they're utilizing. The act doesn't prescribe that they need to. However, they may, and many already do. Certainly, a consumer could put that in as part of the transaction — that they would receive a certain amount of interest for the use of those funds in the intervening period — but we're not prescribing that in the act.

I don't know if the member had additional questions. I was just going to suggest that if he did, he could remain standing in between, because I know it's an effort to get up and down with his temporary disability.

Interjection.

Hon. G. Collins: Yeah — ejection seat.

I agree with the member. I think this is a welcome change and will certainly help facilitate greater activity in this sector, reduce costs for consumers potentially, as well as help the industry in moving these developments forward. I think it's a great innovation, and I hope members will support it.

Sections 1 and 2 approved.

On section 3.

G. Halsey-Brandt: My questions on section 3 are about the timing of marketing of development prop-

erty. I know they'll spill over a wee bit into division 2, but I think it sort of starts with section 3, so I'm going to ask the minister that question.

Right now, as I understand it — and perhaps your staff can correct me if I'm wrong — if someone's doing condos or if they're doing a fee simple subdivision, they can at least sell the condos when they have a development permit as opposed to a building permit from a municipality and file a prospectus.

On the subdivision, I'm not exactly sure of the criteria they hit when they do that. I think it's when they file the subdivision plan. Perhaps I could just ask you to clarify what the situation is now and what the change is going to be under this legislation, particularly around condos — whether it's development permit or building permit. I've been approached by some developers in my municipality over the weekend who were concerned that they have to wait longer now before they can sell their property than what it was before.

[1505]

Hon. G. Collins: With regard to condominiums, what we're doing in the legislation is just codifying the existing practice. There will be no change to that. I believe the superintendent will bring in rules, etc., to implement that, but it's going to be essentially the existing practice.

With regard to other developments, however, we are trying to put in place processes whereby the pre-selling can happen earlier — not later, but earlier. Particularly on subdivision lots and other types of developments outside municipalities, provided they have approval by the local government or whatever building permitting approval process within that local government.... Once they have that and if that is satisfactory to the superintendent of real estate, then they can actually start the process earlier. What we're trying to do is advance it where possible. Where we're already in a position to do early pre-sales, as in the case of condominiums, we're continuing that. There is certainly nothing in the legislation that would delay it. In fact, what we're trying to do is move that forward a little bit.

G. Halsey-Brandt: Just to clarify that, which I believe is excellent news.... Generally for a condo, most municipalities — certainly the larger ones — require a development permit in terms of the architectural renderings and drawings of the floor plans and that sort of thing — not building drawings, but ones they take to a public hearing so everyone knows pretty well what's on the ground. That's the stage that they're usually doing the pre-sales on now, because the building permit may take them.... It could be a year after that in terms of doing all their architectural drawings and putting up the money. If they can still do that at that stage, that's great.

On the subdivision in the legislation. This is jumping ahead a wee bit, but it's still under marketing in section 10. It talks about approval-in-principle according to the local municipalities. I would take that this would be a subdivision approval subject to construc-

tion of roads, sewers and all that sort of thing. They put up the bond that they're going to do that. Then the developer could go ahead and do some pre-sales of those lots and would have a time frame, certainly with the municipality. They put up a bond that they are in fact going to build the municipal services — the roads, sewer, water and that sort of thing — and file a subdivision plan. I would assume that's what that approval-in-principle stage means.

Hon. G. Collins: With regard to developments within a municipality, it's entirely a local government matter, so we aren't involved in that. The local government makes those decisions and determinations.

If it's outside of a municipality, as long as they have approval-in-principle from whoever the body is that they need to get approval-in-principle from — it could be a regional district or someone else — they're allowed to start the pre-sells. When the pre-sale is made and the deposit is paid, that deposit is held in trust. If the developer does not deliver on the commitments they've made, then that trust money goes back to the purchaser. We're not stepping in as government at a provincial level to play some sort of a bonding role that will administer that. That's not what we're trying to do. [1510]

It's approval-in-principle. That's a fairly early stage. It can be different in different places, but the backstop for the consumer protection on that is the deposit, the trust of that deposit and the fact that if the developer doesn't deliver, they can get their funds back.

G. Halsey-Brandt: Just going back within a municipality, and then maybe you could clarify this for me: does the act not cover that if it is a municipality? Or is this section we're referring to outside of a municipality? I'm assuming the act does cover what happens in a municipality.

Hon. G. Collins: For example, I think the case the member raised was a subdivision, a lot — the lots in the subdivision. If you are inside a municipality, this act will exempt that development by regulation from the provisions in this act. It is assumed that the municipality has processes in place through their development approval process and their bonding, or however it is they choose to do it in their municipality, to make sure that the project gets completed and that individuals are dealt with fairly.

We don't step into the municipal role and try and create room for ourselves there. They're fully competent — as the members knows, having been a long-standing mayor of one of the larger municipalities in the province. Municipalities handle that very well on their own, and they don't need any particular guidance from the provincial government. They are exempted from this act by regulation. We would list that, and then the development is under the purview of the municipal government.

Sections 3 to 17 inclusive approved.

On section 18.

B. Kerr: I have a few questions with regards to deposits. The first one is on subsection (1) where it's mentioning: "...must promptly place the deposit with a brokerage, lawyer, notary public...." Can these people be in-house, working for the developer?

[1515]

Hon. G. Collins: Let me give the member an example. If you had a trust or a development company and one of the people in the company — one of the employees — was a lawyer, while that lawyer may be working with the developer, they also have professional obligations. They pay dues through the Law Society. There's professional recourse provided through the Law Society, for example. There is that insurance that goes with being a member of the Law Society.

The lawyer could set up a trust and act, I believe, as the trustee. However, all the professional requirements that go along with being a lawyer and the insurance that the Law Society has for professional misconduct of lawyers would apply. My understanding is that yes, that would be possible. But again, there are professional obligations and insurance that go with that.

B. Kerr: I believe it's another act in which the lawyer's trust accounts and all these trust accounts are audited — I think four-man audits, we used to call it. So that would be under the various societies' acts. They would be audited by an independent party. That was fine. I was just wondering whether that was precluded.

In section 2 we've got the trustee, which could be any one of the number of people mentioned in section 1. They hold a deposit for the developer and the purchaser, not as an agent for each of them. Usually, I think, when you go to a brokerage house now, they're either acting for the purchaser or acting for the seller. I'm just wondering how they can be acting for the purchaser or the seller and then at the same time hold the money, not acting for either party.

Hon. G. Collins: It is the same provision that currently exists in the Real Estate Act and has been used for years. It's a fairly common stakeholder provision. That's my understanding. It's something that's worked in the past and that we anticipate will continue to work in the future.

B. Kerr: I'm concerned when I look at where the trustee must turn the funds over to the developer. I'm concerned about the protection for the potential purchaser, because there doesn't seem to be anything in there to protect the purchaser if the deal is sliding. I'm talking about the timing of when things can be registered and when he can actually have title registered in his name.

There's a section here under section 4. It says that if the period under section 21 has expired.... But what would happen if he can't register title? He doesn't get it

when he's supposed to get it on the closing date, yet the time for rescission has expired. What protection does the purchaser have?

[1520]

Hon. G. Collins: I'm trying to understand the question properly. If I have it wrong, the member should please let me know.

Subsection (4) deals with an obligation of the purchaser. If the purchaser has paid their deposit and if there is an agreement and they have to put some additional money into the deposit, as long as they're doing that, there is no trigger on section 4. There is no default by the purchaser, and there is no ability for the trustee to pay or the developer to request payment of any money that's in the deposit. There is subsection (4) and the four sub-subsections (a), (b), (c) and (d) underneath that, and there is a requirement that the purchaser would miss a payment or not live up to their part of the deposit schedule, if that were the case. As long as the purchaser is making their payments as was agreed upon, then section 4 can't be triggered. The developer can ask, but there's no ability for the trustee to pay out any funds.

Maybe what the member was getting at, and that's why I'm not sure if I understood his question.... If the example the member has is.... Let's say the purchaser and the developer have entered into an agreement that money will be paid at monthly intervals until such amount of money is built up in the deposit. The project is being delayed, the developer isn't living up to their end of the bargain, and the purchaser says: "Lookit, until you get this project back on track, I'm not putting one more penny into the deposit." Then there are remedies that are available to the purchaser that they should probably be taking first. Those exist in subsection (2). There are some requirements under subsection (2) that have impact.

The second last one is sub-subsection (h), which is in accordance with a court order. If the purchaser wanted their money back, they could go to court and say: "Look, this guy isn't living up to his end of the agreement. I have been making my payments. This project is way behind schedule. It doesn't look like it's going to go ahead." The company may be failing; the development may be failing. "They haven't lived up to their part of the contract. I want my money back." The court can say: "Yup, give him his money back." They can direct the trustee to give the purchaser their money back.

B. Kerr: Getting close. I think that's what I'm getting at, but it seems to me that the incumbency to take this person to court to get the deposit back would be more suitable if it was just that they could rescind the deal if it went sideways, because under section 4, the trustee must release the deposit. Even if the trustee recognizes that something's sliding, there's no right of rescission for the purchaser.

[1525]

If a developer is getting into some real financial difficulty and needs some money and the right of the

21-day rescission period is over, he could just go and write the letter and say, "I want the money; it's a one-sided deal," then get the money and say to the purchaser: "You can fight me in court later to get it back." There is no protection in there to protect the purchaser.

Hon. G. Collins: Both parties have to live up to their side of the agreement. The purchaser could allege that the developer wasn't living up to their side, and they could have that discussion. It would ultimately, I suppose, be up to the courts to decide whether or not that were the case. There is a simple test for whether or not the purchaser is living up to their commitment, and that is if they stop paying — right? It is a little clearer.

Hopefully, you never get there. Obviously, at some point in the future there will be a case where you end up in this situation. If I were the one putting money on deposit, and I was going to go to court — I didn't think this deal was moving ahead — I would want to be.... You'd probably first approach the developer and say: "Lookit, you're not living up to your requirements; I want my money back." You know, you could probably get it back voluntarily. I don't know. I'm assuming if you both agreed, then the money could come back to you. If there was a discrepancy, there is a process by which you can go to court and get a determination on that.

While that's happening, as the other party to the contract, I would think you would want to keep living up to your commitments. The money you're putting on deposit is not going to the developer; it's actually going into trust. As long as you live up to your part of the bargain and you make your payments, then it seems to me you're in pretty good shape under the act.

There could be the reverse, where you've got a purchaser and the rescission period has passed. For whatever reasons — maybe in their own life they've lost their job; maybe there is a divorce; maybe they just have buyer's remorse — they would like to get out of this deal. They can go and say: "Oh, you're running behind schedule." There may have been some disruption in the schedule, but the developer feels they will be able to catch up. It may not have a lot of credibility in fact, but the purchaser believes or is trying to put a case forward that the developer isn't living up to their commitments and says: "That's it. I'm not paying you any money, because you're behind schedule."

There has to be some protection for the developer in that agreement as well. I think that's what this section is trying to do. Subsection (4) is saying that there are recourses in subsection (2), but there needs to be some protection for the other party of this contractual arrangement if the purchaser stops making their payments and fails to live up to their agreement. They shouldn't just be able to trigger it like that. That's why there is a rescission period. Once you go beyond that and the contract has gone a little further, you are both expected to live up to your duties and responsibilities. If either of you don't, then there is a resolution process. That's how it would work.

B. Kerr: I guess that's the concern. I can see that the protection for the developer is here, and I think that's great, because these are the guys who are investing big dollars. For a person in relation to the money that they have.... If they're a first-time buyer and it is a small deposit — say \$5,000 or \$10,000, which could be a substantial sum of money for them — they can't really afford to take the developer to court if things go sideways and the developer says: "I want my money on a technicality." I guess I'm concerned that there should be some protection in there for the purchaser. I just don't see it.

[1530]

Hon. G. Collins: I think it is fair to say that that could be.... If it's a very small amount of money, then the investment you would have to make in going through the court system or the legal system may be more onerous or more costly than the amount of money you are going to recover.

Let me give the member an example. Let's say that the development goes bankrupt. If that happens, then the bankruptcy trustee has to present a new prospectus, a new set of documents, and put that before the people who've already put their money on deposit, and then there is a new seven-day rescission option for them. At that point you say: "I've had enough of this. I don't like the new prospectus either. I don't think this thing is ever going to fly. I'm outta here." You can take your money at that point. So there are some provisions.

These two sections are, I would say, a fairly significant improvement over what's there currently. Currently, the money is held by the developer, and the developer gets to decide if it goes back. This is far more balanced. There is far greater consumer protection here than there is in the current act.

If you look at subsection (2)(i), there are other provisions. If we observe a problem developing or some scenario, as the member described, where an injustice could be done or is being done, there are provisions under this for regulations to be brought in under this act that would allow for the flow of those funds in the trust back to the purchaser. We have in this case eight provisions, up to (h), and then there is the ninth provision under sub-subsection (i), which gives us broader powers to do other things if there's a problem that arises that we don't foresee at this point. There is a provision to deal with that should a problem like that arise.

B. Kerr: Moving on. On subsection (4)(c) and (d), just for my benefit, I wonder if there is a redundancy here. On the penultimate line of sub-subsection (c) it says: "if the developer elects to cancel the purchase agreement, the amount of the deposit is forfeited to the developer, and (d) the developer has elected to cancel the purchase agreement." I just wonder if that's a redundancy there.

Hon. G. Collins: Sub-subsection (c) is, "under the terms of the purchase agreement," if they have chosen to do that, and (d) is: and they actually do it.

B. Kerr: On the penultimate line, though, isn't it saying that they have to do that in order for the deposit to be forfeited — if the developer elects to cancel the purchase agreement? They have to make that election anyway before it can be forfeited.

Hon. G. Collins: Under (c), the terms of the purchase agreement would have to allow for the developer to cancel, and then under (d), the developer would have to actually cancel. Both of those have to be in place. If it's not in the terms of the agreement, then it doesn't work.

B. Kerr: That's all I have, Mr. Chair, under section 18.

G. Halsey-Brandt: I had mentioned section 19, but I think they are probably more appropriate under this section because it is around the deposits.

Under section 18(2), if the money is in the hands of the trustee and a purchaser or the developer has a problem, it is not up to the trustee.... They don't have a decision-making power unless both parties agree to release a deposit. In other words, they don't have any quasi-judicial system. They have to go to court to get that unless both the purchaser and the developer agree. Is that correct?

[1535]

Hon. G. Collins: It's not a discretionary role. The trustee has to act within the confines of this section. It says the trustee "must not release the deposit from trust except as follows...." Then there are nine ways that could happen, and only nine. There are eight that are in some detail, and then (i) would be regulations that may be developed at a later date. So if the money was paid into the trust account in error, then the trustee can look at it and say: "Oh, it's an error. Get your money back." Or (b) could repay it to the purchaser with the written consent of the purchaser and developer. There's an example where the two parties, the purchaser and developer, could agree, "Let's part our ways," or "Yeah, you paid too much," or "We don't need that much anymore," or however it might work. They could agree to release some of that. Or (c), and I could go on. There's an array of things. The trustee must act within those provisions.

G. Halsey-Brandt: What I'm getting at around that — and I think you've covered it off — is really they have to go to court even if the trustee... For example, it happens a lot on pre-sales where the developer says that the apartment building is going to be finished in May of 2004. So the purchaser sold their house and is moving out this month — right? It's going to be six months away. Or they've got some bankruptcy problems or whatever and they're short of tradesmen. You know the purchaser is really upset — right? They have to go and rent a place. They'd would just as soon take the money back and go and walk. Even if the trustee might agree with that in terms of the agreement, the

trustee doesn't have the ability to make that decision. They would have to go to a court to decide that.

Hon. G. Collins: Yes. And I take this opportunity for thanking my former in-laws for putting me and my ex-wife up for three months while we were in a very similar position. They were very gracious about it. They put us up in a two-bedroom apartment — and our dog as well. So it does happen from time to time.

In that scenario, let's say, it is not up to the trustee to say you are hard done by, so therefore you can have your money back. You have to go through the processes as prescribed here. They don't get to sit in judgment. They have professional obligations to follow this and to deliver upon it. If in that case, for example, the purchaser and the developer.... Let's say it's a great development, but somebody's got kids, and it's just not going to work. It's going to be six months longer, and they say: "Look, this is just killing me. I can't do this. I've got all this money tied up there. I can't go live in a one-bedroom apartment. I really need to go find something else."

They sit down with the developer. The developer says: "Okay, there are 83 units; you're one. It's not going to hurt me. Fine, I understand." They come to an agreement, and they release the funds. That could happen.

But it's not up to the trustee to say this person is really inconvenienced here. Give them the money, and if you don't give it to them, I'm going to give it to them. They don't have that power to do that. Somebody could go to court, I suppose, and claim an undue hardship. I don't know how that might work; I'm not a lawyer. They could, I suppose, try and do that, but that would again have to be a decision of the court and an order of the court, not at the discretion of the trustee.

G. Halsey-Brandt: My next question is around the deposit protection insurance. Is there a letter of credit involved in this at all? Does the developer have to put up a letter of credit to guarantee the insurance company, or is it just a question of the developer paying the premiums — whatever they are — having the insurance and then using the deposits?

Hon. G. Collins: The Financial Institutions Act would regulate how insurers are able to operate for solvency, etc. There may be an array of products that come forward. I don't know what they might be. I could probably try and get a sample of what they might be and what they are in other jurisdictions. It may not be just one type of policy. There may be an array of products that are available. Provided that they meet certain standards, then they would be eligible to release those funds or let the developer have access to those funds and use them in their development.

[1540]

G. Halsey-Brandt: My last question on this section. If they decided to go the insurance route instead of the trustee route, are those provisions, as it sets out under

(2) and (3)...? Could we just insert "insurance company" as opposed to trustee if they choose to have an insurance for the deposit as opposed to a trustee? If I'm a purchaser that is upset, I look at this list of things and decide to go to court. I go the insurance route instead of a trustee, but it's virtually the same thing in terms of what's available to the purchaser.

Hon. G. Collins: We're sort of looking at 18 and 19 together here. I think if you look at 18(2)(d) — those nine scenarios under which the trustee can release the funds — (d) is in accordance with section 19. That's the insurance one, where there's deposit insurance in place or some sort of mechanism by which those deposits are insured.

If the requirements under section 19 are in place, then the trustee can say: "Okay, you've set up insurance, whatever model that is. The deposits are guaranteed or insured, etc. Then I can release those funds to the developer, and they can use that for the project." If the developer subsequently defaults on that, then it's the insurance company that has to come in and pay out the purchasers who've put those deposits forward. That's how the system would work. I expect they'll try and recover it from the developer through the many means that they would have at their disposal.

I notice the member for West Vancouver-Garibaldi is in the chamber. I recall now there was a question by that member, who asked me a day or so ago — not in the House but outside — about the interest being paid on deposits. I think it was in response to a question, perhaps, by his seatmate. The act does not require that interest be paid on those deposits to the purchaser. However, many do. Certainly, it's something that could be negotiated as part of the contractual arrangement between the purchaser and developer as part of pre-sale that a certain rate of insurance would be paid.

I know that the larger ones do as a part of their marketing. They want to make sure they treat people fairly. Many do. It's not required in legislation, but certainly if it is not offered by the developer, then a purchaser could ask that it be put in the contractual arrangement. I just wanted to answer that, because I think I had given an erroneous answer to the question a couple of days ago.

D. Hayer: How does this section work to protect the consumer more than the protection they have available now, and what extra flexibility does it give to the developer?

Hon. G. Collins: As far as the consumer goes, as I think I mentioned in response to an earlier question, previously those funds were held by the developer. Now, under this act, those funds will need to be held by a trustee — a lawyer, a notary public, a broker, etc. There are people who will act as trustees. They have responsibilities — professional responsibilities, fiduciary responsibilities — to manage those trust funds in accordance with other legislation that prescribes the

actions of their profession, and they have some form of insurance.

The Law Society manages the funds. If there is improper behaviour or fraud perpetrated by a member of the Law Society, the Law Society steps in and provides restitution. They levy a fee on their members in order to ensure that's there. Notaries have an insurance plan; brokers, I think, have a similar type of an insurance plan. Previously, you put your deposit in, and the developer held those deposits. Now the deposits are held by trustee. In that regard, the consumer protection is enhanced.

As for the developer, there's greater flexibility here. If you're building a large project, access to capital is often an issue. It's short-term capital. Interest rates on short-term capital can be higher — depending, I suppose — so you have this pool of money sitting there from people who made a deposit. They're going to live there. They're basically buying the development from you, and there's this money sitting there.

We've now provided in this legislation a mechanism that exists in other jurisdictions whereby if the developer goes and secures insurance on that money, they can actually apply to the trustee and have the money released to them. They can use that money in building the development and getting it up and ready. They have access to the capital.

[1545]

That helps them and gives them other ways of getting capital. They could still choose to go and get it on the financial markets. They could borrow it from partners. There are any number of ways that people can acquire capital. Here's one more way that's available to them.

As I said earlier, should the developer default on those funds or have them released by the trustee and take them into their possession and then the development fails, there is an insurance policy in place that would provide restitution to the purchasers who had put that money into deposit. So the protection is there for the consumer. It's somewhat enhanced, and the flexibility is there for the developers in that they have another source of capital.

Sections 18 to 20 inclusive approved.

On section 21.

G. Halsey-Brandt: My question is around the three days, which I think deals with buyers of new condominiums, going to seven days. I think this is just great, particularly when the market... You've got people lining up all night and this sort of thing and pressure on people to buy something. Having the seven days is just great. Although we don't have a lot of time-shares, I think most of us in this chamber have probably been in some part of the world where we've run into time-share salespeople. The pressure does get pretty heavy on you, so having that seven days is a great benefit for consumers.

I'm assuming that by going to this seven days, where it's... First of all, no other conditions apply. You

don't have to write into your purchase agreement that it's subject to seven days or anything. The statute, in fact, overrides anything. If I didn't write it in there or if I wrote in that I waive the seven-day rescission period — which is ultra vires or something, I guess the term is — the seven days applies no matter what. It's in provincial legislation as opposed to what people can write in there.

My second question, if I can just ask it now, and my last one on this bill, relates to... This is only for new purchasers of homes, condominiums and time-shares. In the resale market out there this does not apply; it's just as it is now. Secondly, not to put too fine a point on it, but with the market we have now, a lot of people do what I guess we might call flipping. They've never actually lived in the place, but they resell it. It just covers the first purchase — I guess that's the clearest way to put it — of a condo or of a new home.

Hon. G. Collins: We are in a bizarre period of time right now. I was just sort of joking here that people go out for a latte and on the way to Starbucks stop and buy a condominium. It's sort of like the Soviet Union. You walk down the street, and there's a big lineup. Get in line, because you don't know what they're selling. You may want some. It's sort of a weird time right now. I've driven by a few of the lineups in the last couple of months — not my constituency but in the member for Vancouver-Burrard's constituency, in particular.

The act standardizes it to be seven days. There was different number, depending on the product, previously. Now it's seven for everything, so it's clear. It's not less than seven, so even if you write in the contract, "I waive it," it doesn't work. It's seven — right?

However, apparently you can agree to make it longer if you wanted. If the developer agrees and you agree, you could make it longer. Seven is a pretty good number, but maybe there's a reason why you might need it longer. Maybe your spouse is off on safari in Africa or is one of those medical researchers down at the South Pole. I don't know the reason why you might want it longer. But it's no shorter than seven days, and it applies to the first purchase of the new product.

This is with developers. If I go and get in that lineup while I'm on my way to get a drink and I buy one, and if I turn around because I got the last one and there are three people behind me who want it and I flip it to them for the price of the coffee, then there is no rescission agreement or period between me and them. That's pretty extreme, but it gives you a sense of the nature of it.

[1550]

R. Sultan: Section 21 says: "(1) A purchaser does not have a right of rescission under this section (a) if the purchaser is not entitled to receive a disclosure statement under this Act..." When would a person not be entitled to receive a disclosure statement but nevertheless have, perhaps, some imagined right of rescission?

Hon. G. Collins: If I come back to the line of questioning we had with the member for Richmond Centre — if I remember correctly — an example would be if somebody were in a subdivision lot within a municipality, in which case that would have an exemption. It would not apply under this act. Previously, there was not a rescission period under this act. We haven't added one. The current practice would be in place in that the municipality is exempt. That subdivision lot would not have the seven-day rescission period, because it doesn't fall within this act and wasn't previously part of it either.

R. Sultan: Continuing with section 21, there's a reference here, in fact, to the disclosure statement. The disclosure statement is defined in the act as a statement that discloses material facts in accordance with section 14(2). If you go to section 14(2), you discover that a disclosure statement must, without misrepresentation, plainly disclose all material facts. I guess this does beg the question: what's a material fact? I think it's a very practical question, in the sense that it would be helpful to people making use of this act to understand the mindset of the ministry and the minister in framing these words. For example, is the fact that a condominium was previously used as a grow op a material fact, in the opinion of the officials and the minister present?

Hon. G. Collins: Given that this act deals with new developments, unless the contractor was running the grow op while they were constructing the project, it's unlikely there would be one. I know that's just an example the member is raising.

If you go back to part 1, section 1, and you go to page 5 of the bill, you'll find in the definitions that "material fact" is actually defined. There's actually a listing of some of the.... There are four points there. The last one is other prescribed matters. We could add to that as well. If (a), (b) and (c) don't cover it and we decide there's a problem and we need to add to it, then we could do that.

R. Sultan: I presume the same reply would apply to termites and leaks in the roof.

Hon. G. Collins: Again, it's new development, so they would be very fast termites, or it would be a very poorly constructed roof, but it wouldn't be the first time.

Interjection.

Hon. G. Collins: Or a very wet season. I don't know.

If you look at "material fact," it says: "...means, in relation to a development unit or development property, any of the following: (a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property."

[1555]

I suppose the construction of a new highway off the back yard might be an example of that. Whether it's a tunnel or not, it might be part of it. So "(b) the identity of the developer; (c) the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court; (d) any other prescribed matter." It's really pretty much what it sounds like. It needs to have a material impact on the price or the value of what you're buying.

R. Sultan: Since I would gauge that many of the officials who assisted in drafting this new act also worked on the recently adopted new B.C. Securities Act, and since I suppose one could make the case that a statement of disclosure for a real estate project is not unlike a security prospectus perhaps, are there some similarities here? And are we living up to the same degree of rigour and disclosure that might apply to financial securities?

Hon. G. Collins: Section 1 of Bill 38, which is the Securities Act — which I think passed through the House this morning in committee stage and third reading — lists "material information." It's not exactly the same word, but they're trying to do similar things. It says: "...means information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of the issuer or a security of the issuer." In here you can see we're trying to do similar things. There's a bit more detail. There's the identity of the developer, bankruptcy trustee, etc. I suppose that could be assumed to be rolled into that. This says: "...that affects, or could reasonably be expected to affect..." In one it's "significantly affect," and in this one it's "affect or reasonably be expected to affect."

I don't know. Maybe it's a wash. The goal is the same: to try and provide information to the purchaser so that they have some sense of what they're purchasing. They are different products and can be different in many other ways, as the member is aware. Securities can be quite different. When you're buying here, you're buying real property, and you can actually see it. It's tangible, and you know where it is. Anyway, I think the effort is the same. Different words are used, but we're trying to protect the consumer in similar ways.

D. Hayer: Under this section it says that the purchaser can rescind with seven days of written notice. How can this notice be delivered? I think it's going to be in regulation. What different ways or methods are you looking at for how the purchaser can deliver this notice? You know, if they're out of town or after they have purchased.... Sometimes we have people living out of the location.

Hon. G. Collins: Subsection (4) says it needs to be done by regulation. That means that's yet to come. At this point the regulations aren't drafted. Aren't com-

pleted — let me put it that way. It's expected at this point that you would need to provide written notice to the business address of the developer — or to the brokerage if they were using a brokerage — in order to do that. That's what we're looking at, at this point. But if the member comes across a loophole there or a better way of doing it, then I'd be thrilled to hear the suggestion. Or if he hears from somebody who's got a concern or a better way of doing it, then we'd love to hear that as well.

[1600]

D. Hayer: Will the purchaser be able to use e-mails or faxes? Or will they have to use a courier service or a delivery service or postage or any other system? As technology changes, will there be flexibility available for the purchaser to use new technology to rescind if they have to?

Hon. G. Collins: We'll look at that. More and more, electronic transfers — electronic exchange of information — have more traction under the law, I would say, so that would certainly be something. These contracts may be done electronically, sent electronically, and there would be no reason, one would think, why one couldn't send an e-mail that you could verify came from the sender that would qualify.

We'll take that into consideration when we draft the regulations and see if that would be a proper way. If it could be done in a way that you could be secure and be sure of it, then maybe that's something we could do. We'll certainly look at it.

D. Hayer: Under section 21(6), it says: "...the person must promptly return the deposit to the purchaser." Does the minister have any idea what "promptly" is looking at? Is it weeks or a few days or a month? Sometimes people assume a different definition — just some idea so that people can understand.

Hon. G. Collins: Yeah. We don't define every word or everything that we do. When one puts "reasonable" in there and "promptly" return it, it's assumed that it's done in a reasonably prompt time. It doesn't have to be done within five minutes. If you start to get into months, it's probably pretty long. Maybe you want to do it, and your accountant's away for a couple of days — or the person who writes the cheque. Then it might take a few days.

I would think it would need to be reasonable and would have to pass that threshold. If you're still waiting for it after some period of time that's unsatisfactory to you, then there are ways you can try and move that along — but promptly. Everybody understands what's reasonable, and there would have to be a compelling reason not to do it in a reasonable length of time.

Section 21 approved.

On section 22.

B. Kerr: We have a situation in 22(3)(b) where we have a right of action for damages against a developer, a director, a person who consented to be named as a developer, a person who authorized the filing and the person who signed the disclosure statement.

Then I just want to go down to subsection (5). It says: "A person is not liable to a purchaser under subsection (3) if the person proves that the purchaser had knowledge of the misrepresentation at the time at which the purchaser received the disclosure statement." Does the fact that it uses the words "a person" and leaves out the words "a developer or director" mean that the director and the developer and, I guess, the person who consents to be named as a developer would still be liable? I hope you understand my question.

Under subsection (5), we use the words "a person is not liable." I'm just wondering if the words "a developer or the director" are intentionally left out there, meaning that they would still be liable, rather than just using the word "person."

Hon. G. Collins: In subsection (5) a person is a broader definition, I would say, than a director or developer, but a director or developer could be a subclass of a person. It's a broad definition, and others could fit within that, I think, if that's what the member is asking.
[1605]

B. Kerr: Just to clarify, then. We're saying that nobody is liable to a purchaser if the purchaser was aware of the misrepresentation before they signed the agreement.

Hon. G. Collins: Subsection (5) is a broad exemption from the liability. It is with regard to if the purchaser, the developer and their representatives all know what they're dealing with and they enter into that agreement, there's no liability because they knew what they were doing.

However, if one goes down to subsection (6), it talks about an individual. If an individual within the company was doing their due diligence, acting in their best interests and putting forward what they thought was true, they could be exempted from the liability, but the corporation itself would not. Does that answer the member's question?

B. Kerr: Thank you for that. I was leading right into that in subsection (6). I'll move right on, then, to subsection (9), and I want to follow up with the question that my colleague from Richmond Centre had.

In subsection (9) it says that you've got two years after the time you recognize that there's been a misrepresentation. I've got two questions. If it takes 20 years — possibly a latent defect in there where the work wasn't done — would you still be able to have the two years after you discover that to file a claim of damages?

The second one is: would this succeed to a subsequent purchaser, this particular section? Would this go to a subsequent purchaser, or is it just for the purchaser at the time?

Hon. G. Collins: First of all, to answer the last question, resales aren't covered. These are only for the first transaction. But yeah, for example, if you were to find out 20 years from now that the developer stuck urea formaldehyde in your basement wall or something and you didn't find it until 20 years from now and you had to rip it all out.... That might not be the best example, but maybe that would work. It's from the time you find out. If you discover that, you've got time to take action. That could be any length of time.

Hon. K. Falcon: I'd like leave to make an introduction.

Leave granted.

Introductions by Members

Hon. K. Falcon: Mr. Chair and hon. members, I'm pleased to say that today in the House we are joined by a class of grade 5 students from Surrey Centre Elementary. This is half the class, I imagine. I had the pleasure of meeting them along with their teacher, Ms. Scarlett. They are here along with a bunch of the parents. I would ask the House to please recognize them and to understand that Surrey Centre Elementary is one of the finest schools in Cloverdale, if not the province.

Debate Continued

R. Sultan: This question may be grossly out of sequence, but I've been pondering the very thoughtful comments on termites and leaks given to us by the Finance minister. It occurred to me that perhaps some people picking up this new act would not be aware that in fact it pertains only to new developments, as I understand his response. I was reading the preamble and the definition of development units, etc. Is it not conceivable that some people might interpret this act as pertaining to existing properties as well?

Hon. G. Collins: It's difficult for me to know what people might draw from the legislation, although I think the title tries to steer them in the right direction. It's called the Real Estate Development Marketing Act. I don't know what more I can do about that. In the definition sections and in the application section of part 1, it does talk about what this means — what we're talking about. Certainly, if one sort of glances through that, you can get a sense of what the act is trying to deal with.

[1610]

I suppose people could misinterpret the function of the act and come to different conclusions. That's always one of the risks of even legislators reading legislation and understanding what it means, let alone the general public. I suppose that's what lawyers are for ultimately. Certainly, I would hope that we're clear enough in the title and in the gist of the act, when you get into it fairly quickly, that it doesn't apply to existing legislation.

I expect, though, in the case of the issue raised by the member for Malahat-Juan de Fuca, that if you.... You could easily, 20 years later, discover that problem with your home and not be the original purchaser and find that you don't have the recourse, because it's sold in between. That's just how the system works. I guess we've tried as best we can. I think from a plain reading of the act, one can understand it deals with new developments and not pre-existing ones. I hope people understand that.

Sections 22 to 36 inclusive approved.

On section 37.

R. Sultan: This is the section of the act, division 3, section 37, laying out appeals to the financial services tribunal. What is the financial services tribunal?

Hon. G. Collins: The member will recall that as part of the core review process, the commercial appeals process was done away with — was eliminated. In its place, in order to try and deal with possible small to medium-sized conflicts that people perhaps don't want to take to court, the government put in place the financial services tribunal to try and deal with those. It's much smaller, much more focused. Government is putting that into place. It will be an avenue to which somebody could take a concern as prescribed under this section of the act and hopefully have it resolved to their satisfaction. It's just a cheaper way, rather than going to court, of resolving a dispute.

R. Sultan: I take it from the minister's reply that the financial services tribunal exists today and is operational.

Hon. G. Collins: That legislation setting up that tribunal.... That tribunal we anticipate being set up in the early summer — hopefully June. We're working towards it. It's in place. It deals with provisions under this act, the Real Estate Act, the Financial Institutions Act, the Credit Union Act — those types of financial pieces of legislation. We anticipate it being up and running relatively shortly. I think we've already identified people to sit on the tribunal through the board and commission resourcing process. It's well advanced, and we hope to have it up and operating very soon.

R. Sultan: What would be the relationship between the financial services tribunal and — if I got the name straight — the Financial Institutions Commission?

Hon. G. Collins: The chair of the Financial Institutions Commission is also the chair of the tribunal. Beyond that, the other members of the tribunal will be completely outside that and will be and have been sourced for their broad range of skills and experiences that they can bring to this table. It's not like we just went and picked somebody off the street. We've actu-

ally tried to search out people with a set of skills and familiarity with this legislation and these various business practices that they will be acting as members of the tribunal for, so that they can make decisions and resolve disputes. They are separate bodies other than the fact that the chair is the same.

[1615]

R. Sultan: Would it be fair to assume that the proposed members of this tribunal would be citizens who are perhaps holding down other jobs or doing this on a part-time basis for a small stipend, or would they actually be full-time employees of the tribunal?

Hon. G. Collins: As the member is well aware, there are people with great CVs who hold down public office for a very small stipend and do it more than full-time. We are looking for people who have a set of skills. It will, we anticipate, be a part-time position. We hope it's not used to great extent. We don't believe it will need to be, but it's there and available. We anticipate they'll be part-time positions. People may have other jobs, other things they do.

In many cases, though, this is a perfect position for somebody with a long history in a particular field of practice who has retired or is semi-retired and is willing to offer their expertise, experience and service for, as the member mentioned, a very small stipend. We look for people who are willing to provide some public service. This is certainly the role they'll play — that of public service. It's not something anyone could make a living off, I don't think.

Sections 37 to 39 inclusive approved.

On section 40.

B. Kerr: I guess I'm looking at the penalties and piercing the corporate veil. In section 40 we talk about a "person who commits an offence," and then we go on and say "(a) in the case of a corporation" and "(b) in the case of an individual." I'm just wondering whether we step back into the same.... When we talk in terms of a person, do we go back to the definition under section 39(3)? It says: "If a developer commits an offence under this Act, an officer, director, controlling shareholder or partner of the developer who authorizes, permits or acquiesces...." Would that be the same definition? Do we pierce the corporate veil in this case for somebody that has misrepresented?

Hon. G. Collins: The only difference is that it's hard to put a corporation in jail, and there is a provision in (b) in the case of an individual. Otherwise, the penalties are the same. In the case of an individual, one could imprison them for a period of not more than two years, either in lieu of a fine or penalty or in addition to. That's really the only difference in the penalties between the two. I hope that was the member's question. I didn't hear all of this.

B. Kerr: That's what I'm getting at. Would the fine just go against the corporation? If the corporation is ultimately bankrupt or has no money, would they go on to the directors then?

Hon. G. Collins: First of all, it's feasible that you could apply a penalty to the corporation as well as an individual, a director, etc., and put the director in jail. I mean, it's conceivable that all those things could happen.

B. Kerr: Okay, that answers my question. As you know, a lot of the development companies form subsidiaries. The subsidiary has absolutely nothing that does development, so if anything happens, they can hide behind the protection of the corporate veil, as we call it, and not have to pay out anything.

This morning we passed an act, the Securities Act. In the Securities Act there were fines of up to a million dollars, and in real estate there can be some pretty heavy numbers. I'm looking at this, and my first question is: why are the maximum fines so low? Why are we keeping them so low? Second, wouldn't they be better put in regulation where they could be changed as circumstances dictate as opposed to being locked into the act?

Hon. G. Collins: The \$100,000 fine — it's a penalty — is there currently. However, we have added an additional penalty for subsequent offences, which could go up to \$200,000, as well as a jail term. It's a fair comment, I think, for the member to suggest that it could be in regulation, and then one could adjust it accordingly. Those are pretty significant amounts. I mean, I know that in the case of securities, it's \$1 million, but the opportunity for securities violations could be an awful lot higher perhaps.

[1620]

There could be an example of a large development, I suppose, where one could have a big problem. For the most part, I think these are up-to amounts. I don't think you would use a million-dollar penalty in the Securities Act unless it were a pretty significant violation of the act that somebody had perpetrated.

I think these are reasonable, but it is a valid point for the member to make that one could have put them in regulation and then adjusted them accordingly. This is the way we chose. It's probably arbitrary — and just the fact it was done that way previously.

B. Kerr: I guess my comment is that we've locked ourselves into what could.... If there was a huge misrepresentation or something, we haven't allowed to be able to really go after somebody on the second offence. If that becomes their method of doing business, \$200,000 could just end up being a cost of doing business. That's the maximum for subsequent events, and a person could be developing this apartment block, then another apartment block and another apartment block — each under a separate company. Maybe it's a first offence under each company, and we've sort of locked

ourselves into what could be a cost of doing business for a developer — albeit a high cost, but nonetheless just a cost of doing business.

Hon. G. Collins: We did canvass and look around in other legislation as well as other provinces to see what the amounts were. This is not wildly out of line in any way, shape or form. In fact, we're sort of there.

Saskatchewan is \$10,000 for a first offence, \$20,000 for a second offence, \$20,000 for further offences and \$50,000 maximum for a corporation. That's Saskatchewan. In Ontario it's \$50,000 for an individual and \$250,000 for a corporation. We're not wildly out of whack. Manitoba has a higher maximum. They go up to \$4,000. In Alberta it's \$25,000.

I think these are reasonable amounts. If somebody really was very bad and perpetrated a fraud, then there's a criminal procedure that could fall into place as well, so this isn't necessarily the limit of the penalties that could be imposed on somebody. There are other remedies as well.

B. Kerr: I guess that would be the real serious one. The imprisonment would be the real catch-all for somebody that was a bad actor.

Mr. Chair, those are all the questions I have on this act. Thank you very much to the minister for being forthright in his answers.

R. Sultan: I have a final question and then perhaps some concluding remarks which might close the debate. Standing back and looking at this statute, I believe one can reach the conclusion that it, in fact, will substantially — in the marketing of new and perhaps even not-so-new real estate developments — reduce risk, reduce transaction costs and shorten time periods. At least, those are the goals that we've seen this minister and this ministry produce in the past with respect to important financial legislation.

Comparing the new act with the old, is it possible to give the new users of the act some assurance that, in fact, risk will be reduced, costs will be reduced and time will be shortened?

[1625]

Hon. G. Collins: That's really the whole goal behind this rewriting. This is legislation that hasn't had a comprehensive rewrite for over 40 years, I think. It's faster. People can engage in pre-sales earlier. It's more flexible with regard to access to deposit moneys, and that can help to reduce the transaction costs on developments. From the consumer point of view, we've taken a lot of the superintendent's policy that's been in practice and evolved over time and codified it, stuck it in legislation, so there's some certainty. People can see it, and it's clearly stated.

I think this is a major improvement. I think those people who engage in these — both from the purchaser as well as from the developer side — will find this easy to work with, will find it clear, practical and flexible, and will be comfortable with the level of security and

protection that they're granted. It's the kind of change to legislation that, quite frankly, should happen more frequently.

I've probably said this in the House before; I know I've said it publicly before. One of the real benefits of the deregulation initiative of government has been to force government to look at legislation like this, update it, put it in a position where it's more results-based and actually ask questions about the burden that's placed on those people who use legislation or fall under the purview of legislation. I hope that over the years, it's not another 45 years before this legislation is updated again. In fact, I hope it's updated on a more frequent basis. That's always at the discretion of what's on government's agenda and how quickly the House deals with legislation when it does come forward.

We had a good debate here today and examined some of the sections in detail. That's good to do that, because I think it clarifies what's in the legislation. In future I hope that as little bits, little amendments, of legislation come forward in time, the House can deal with them in a relatively expeditious way. You're able to then bring this legislation before the House more frequently, update it more frequently — not just this, but other legislation.

I think we've achieved a great deal here. Certainly, those that work with it and are out there purchasing homes — new developments — will find it works better for them. I thank the members for their comments, and I notice the member from West Vancouver-Seymour may have an additional question. I always eagerly await them.

The Chair: The member for North Vancouver-Seymour.

D. Jarvis: Yes, I'm glad you got that right, Mr. Chair.

I just wanted to ask the minister... I'm sorry; I've been busy on some other meetings, so I wasn't sure whether the question was answered. Basically, most of the realtors I've talked to are happy with the new act and all the rest of it. The only question and concern that ever came up was — and maybe I'd like to get it down in writing — how the rules and regulations were going to appear and if there would be any consultation by the minister with the members of the industry.

Hon. G. Collins: There are actually two pieces of legislation before the House right now. This is the Real Estate Development Marketing Act, and it deals with the marketing of new developments. The other one is the real estate act which deals with the professions, etc., and previously both of those were in one act. We're rewriting that and separating them into two pieces of legislation. The one we're dealing with here today is the development act. We will be having a discussion about the other act probably in the next day or so — the Real Estate Services Act.

Certainly, I know from the realtors that they're very pleased with the changes that are coming before the

House. There was previously in that act a series of exemptions for individuals and professions, so they didn't need to comply with this act in order to do the work that they do in their profession. Auctioneers spring to mind. Lawyers and notaries have been looking for an exemption — accountants and other people who have to transact in real estate as part of their profession but aren't really in the business of real estate. Government had tried to resolve all of the issues with regard to those exemptions.

There was a conflict between the legal profession and the realtors from lawyers who would like, as a big part of their business, to engage in the sale of real estate — not just as a course of doing the financing or dealing with estates but actually getting out there and selling real estate. The problem was that they were bumping up against the realtors. One could say that it's a fight over market share or a fight over business.

[1630]

I think the lawyers made good points. They said: "We already have some of the strictest codes of conduct under the Law Society, and we're insured. We have a lot of training, a legal degree, etc. We should be able to do this, and certainly there's no risk to consumers." I think they make a valid point in that regard. I don't think there's a huge risk to consumers.

Realtors are saying: "Well, we're the realtors. This is what we do. This is our profession. This is our market share. We want to be able to do it, and other people shouldn't be coming in and doing that."

We have the same issue with optometrists and opticians and ophthalmologists. It happens a lot in areas where we regulate. What we tried to do was send those parties away on their own to try and resolve that dispute. They did come back with a resolution, which we've tried to put in place. As we've done in other acts — like the Securities Act, which passed through the House this morning — and other provisions, we've tried to take those exemptions out of the act and provide for those exemptions in regulations.

That's our intent with the Real Estate Services Act as well. We've heard representations from others that they'd like to have a part in drafting those regulations. I'm happy to have anybody give us their submissions or their comments or suggestions. It's fair to say that the legal profession would rather see their exemption in the act, and they have made representations to me as late as yesterday morning. Government is trying to come to a conclusion, a determination as to what we do with that — whether we put it in the act or whether we leave it in regulations, as was the original intent. Certainly, if it's part of the regulation, then I would hope that the various professions that have exemptions would be able to offer to us their view on how those regulations might work.

The goal here is how to put a real estate act in place that works for consumers, for the people of British Columbia. We have to somehow get past the positions of the various parties, the various professions, and their goals and take into consideration their concerns but do what's right for British Columbians. Any input we

have from those professions, we'd be pleased to have. We'll try and do the right thing, but we have not concluded the final decision on that.

R. Sultan: If I just may make some concluding remarks. I think this new act is representative of the kind of nuts-and-bolts legislation that is not as glamorous or headline-grabbing as, say, the Olympic project or a new bridge over the Fraser River but nevertheless affects hundreds of thousands of people and the lives of many, many persons on both sides of these transactions. I think it's a tribute to this ministry, taking the time and energy in a very busy schedule to try and clean up some ancient legislation that really was no longer doing the job.

As I gauge the legislation, it strikes a very fair balance between the rights and interests of consumers and the liberating elements so that developers can get on with providing the housing and other infrastructure that British Columbia needs, since the population growth has resumed and the building boom is in full swing.

This sector of industry is probably the single largest asset in the lives of ordinary people in British Columbia. One's equity in a home or a condominium is a huge fraction of the net worth of British Columbians. Getting the marketing arrangements by which these units are bought and sold and governing the marketing practices, I think, is vitally important to the financial health of the consumer. Again, particularly given the overheated market — I guess some of us would hope it might last forever; we know it won't — it's particularly timely that the legislation would be introduced to make sure that disreputable practices are not engaged in, that there's full disclosure and transparency, and that both consumers and developers know exactly what the rules of the game are.

I again compliment the minister and his officials for bringing in legislation which brings a very complex subject up to date, which is timely and which will be for the benefit of all British Columbians.

Hon. G. Collins: I thank the member for his comments.

I want also to thank the staff people who have worked long, long hours on this. It is a major progression, I think, in the legislation. They've also, obviously, engaged in a lot of work on the Real Estate Services Act, and we'll get to that. I do want to thank them for their effort, their energy and their time, as well as the countless hours of consultation that have gone on with the various third parties, and their assistance in helping to put in place a piece of legislation that actually works. I thank the members for their questions as well.

[1635]

Hon. K. Falcon: Mr. Chair, I would like to seek leave to make an introduction.

Leave granted.

Introductions by Members

Hon. K. Falcon: Today in the precinct we are joined by 25 additional students who are also from Surrey Centre Elementary School in Cloverdale. They are joined by their teacher, Mr. Tito, and several other parents. I would ask that the members please make them welcome.

Debate Continued

Sections 40 to 62 inclusive approved.

Title approved.

Hon. G. Collins: I move the committee rise and report the bill complete without amendment.

Motion approved.

The committee rose at 4:36 p.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

Bill 42, Real Estate Development Marketing Act, reported complete without amendment, read a third time and passed.

Hon. G. Collins: Mr. Speaker, I call Committee of the Whole for consideration of Bill 46.

Committee of the Whole House

HIGHWAY (INDUSTRIAL) AMENDMENT ACT, 2004

The House in Committee of the Whole (Section B) on Bill 46; L. Stephens in the chair.

The committee met at 4:40 p.m.

Section 1 approved.

On section 2.

D. MacKay: Looking at Bill 46 and in particular at section 2, I'm noticing that we're adding the following definition, and that is the definition of a highway. Could the minister tell me: is that new, or is it a change to the previous Highway (Industrial) Act — the new definition of a highway?

Hon. K. Falcon: One of the problems we have is that today a highway is just described in legislation as a public road. What we're doing is changing the definition to more appropriately describe it as a public highway.

D. MacKay: It begs the question then, because we're dealing with the new Industrial Roads Act: why is it necessary to include the definition of a highway so that it has the same meaning as in the Highway Act? If we're dealing with an industrial road, why are we including one more definition of a highway under the Industrial Roads Act?

Hon. K. Falcon: In order to appropriately describe an industrial road, you also have to describe what it isn't, and it is not a highway. You'll see that, actually, in the section, where it excludes what it isn't. Therefore, it's important that we do appropriately define what a highway is and clarify that.

D. MacKay: Looking at the previous Highway (Industrial) Act that will be amended on passage of this new Bill 46, I notice the definition of a highway is not included in there. It begs the question: how did we manage under the previous act without the definition of a highway? And why is it now necessary to include the new definition of a highway under Bill 46, which will change and add to a rather complicated definition section of what a highway, a road, a forestry road and an industrial road are?

[1645]

Hon. K. Falcon: Essentially, what happened was that 50 years ago, when this legislation was written, the terms that were utilized back then were a public road, street, lane or other public communication. That was the terminology used 50 years ago. So 50 years later what we're doing is providing some clarity around that. We want to make sure that the Highway (Industrial) Amendment Act is not to be confused with highways. Therefore, by providing clarity around the definition of highway, we can make it clear that we are not talking about industrial roads, for example.

D. MacKay: Just to touch on the minister's statement about providing clarity to what an industrial road is. I have to remind the minister that I spent 28 years in law enforcement. If I were still in the field of law enforcement, which I have been out of for some time now, and I had to look at an investigation of a motor vehicle accident or under what specific act I should proceed with on a charge.... We have certainly created a bit of a quagmire here.

I'm confused about why we have to add a highway to an industrial road. We talk about industrial roads. We talk about the definition of a highway. Then we also go on to talk about what a highway does not include, and it gets rather confusing. It may not be confusing for the people that write the legislation, but from a law enforcement side, it does create some problems. I guess that's the reason I ask why it is that now we're including the definition of a highway to say what is not an industrial road.

Hon. K. Falcon: Really, all we're saying is that what we're excluding under the definition of industrial roads

are highways. It's just that 50 years ago they didn't call it a highway. They called it a public road or street. So all we're doing is taking the old sentence that used to be there, which said "public road" or "street," and replacing it with the term "highway" to provide more clarity and more understanding in terms of what people now call public roads, which are highways.

I realize all of this can sound enormously fascinating to the folks out there listening. It's part of our effort, when we're streamlining this, to try and write it in plain language. That erases a lot of the confusion you're actually talking about and makes it easier for the public out there to understand what government is talking about — when they talk about an industrial road, for example. They can easily look under the new rewritten section 2 and see, for example, that: "Oh, I see. That's not a highway. It excludes a highway under that definition." Hopefully, that's helpful.

[1650]

D. MacKay: When we move down to subsection (b), when we talk about an industrial road, we've left the highway definition and we're now talking about an industrial road. That means "a road on Crown or private land used primarily for transportation by motor vehicle of...." And then we go into subsection (a), which is natural resources.

Does the definition of a highway include an industrial road?

Hon. K. Falcon: No, it would not. The exact reverse of that question is demonstrated there by the definition of "industrial road," which appropriately, as you pointed out, under (a) and (b) describes what an industrial road is and then below that says: "...and includes all bridges, wharves, log dumps and works forming a part of the road, but does not include (c) a highway."

D. MacKay: All right. Just to go back to the industrial road, it's a road that is used primarily for the transportation of natural resources. I don't know if the minister is familiar with the Eskay Creek road which services the mine of Eskay Creek. That, to me, comes under the industrial road definition because it's used primarily for the transportation of the ore concentrate from Eskay Creek. Is that portion of the road determined to be an industrial road?

Hon. K. Falcon: I think when you read the entire section in its totality, then you sort of get a better appreciation of it. Reading the top half of the section, you would rise to the natural conclusion that the member correctly did — or actually incorrectly did — that if you're moving natural resources along a road, then by definition it must be an industrial road. Actually, if you read through and complete that right down to the very bottom of section 2, then you will realize that after you get through the exclusions, that's not the case. Your question is: because you are moving natural resources along what is considered a highway, does that make it de facto an industrial road? The answer is no.

D. MacKay: Well, I'm really confused now, minister, because we're talking about the definition of an industrial road. Reading the definition of industrial road, it means "a road on Crown or private land used primarily for transportation by motor vehicle of (a) natural resources." A natural resource would be the ore concentrate coming from Eskay Creek. I understand that once it hits Highway 37 and starts travelling south, we're now on a public highway. But that industrial road that was developed and that services the Eskay Creek mine.... Are you saying now that it is not an industrial road? If not, what definition would that private road that has a gate on it come under?

[1655]

Hon. K. Falcon: I'll try it from a different angle. I realize that on the surface I'm not in any way trying to mitigate the seriousness and importance of the question. This answer will hopefully frame it appropriately. It is an industrial road, exactly as you described, as long as that road is not a highway, like the one you described, or as long as that road is not a Forest Service road as defined or as long as it's not a petroleum development road, which are the other specific sections under other specific acts that define what a road is. If it's not any of those, which are identified from subsection (c) on.... In fact, in subsection (e) you'll see the reference to the Petroleum and Natural Gas Act. As long as it's not a highway, as long as it's not a road as defined under the Petroleum and Natural Gas Act or under the Forest Service road act, then it is by definition an industrial road.

D. MacKay: This is where I have to talk about the difficulty in understanding what class of road that is. Now, as a previous law enforcement personnel, I would have trouble understanding. When I read the definition of an industrial road, I would assume that that Eskay Creek road, which is a gated road and services the Eskay Creek mine only, would be an industrial road because it's used primarily for the transportation of an ore concentrate. I don't know if it's a Forest Service road. It may very well be.

It certainly creates some problems from an enforcement perspective when we have to do the research to find out if in fact it's a Forest Service road or an industrial road. My interpretation is for meeting the industrial road.... From the fact that it's used primarily for the transportation of a natural resource, it should be an industrial road.

I am somewhat confused, as you can probably tell from the questions, minister.

Hon. K. Falcon: A short answer to your example about the Eskay Creek road with a gate is: you're right. That would be an industrial road. It does, of course, bring along the question of the example of your experience as a police officer and others that may not understand this distinction. That always has been a challenge. One of the reasons we brought in this act to streamline and try and clarify some of these terms in

plain language is so that at the end of the day, somebody will actually be able to understand the difference between a petroleum development road, an industrial road, a highway and a Forest Service road. In large part, that will be experience that will only come to a police officer or somebody else, frankly, after having spent years in the field and starting to get an appreciation and an understanding of what distinction there is on those different roads.

[1700]

I'm not going to pretend that overnight this has turned on a light that will make that easier now for all those police officers out there to understand what can sometimes appear to be a fine distinction. But at least when they do a quick referral to this, hopefully they will have a clearer sense as to what an industrial road actually is.

D. MacKay: That concludes my questions on section 2, but I have further questions later on.

G. Trumper: I'm not sure whether this is the right place to be asking these questions, because I'm not quite sure of the designations of the roads when we're going through the definitions. To give an exact example which I know you are aware of, there is a route that goes from Port Renfrew to Lake Cowichan and from Lake Cowichan up to Port Alberni. It's what is known as a logging road. Is that a Forestry road? I understand there are different designations on that road, so I'm unclear.

Hon. K. Falcon: The road of which you speak, I'm pretty certain, is a private forest road, which would be captured under the definition of an industrial road.

G. Trumper: It's my understanding that there are different designations on that access, and I do know that the ministry of highways does pay for some up-keep on a certain part of the road. I believe there is a contract with Weyerhaeuser for part of it. I guess the issue I just want to be clear on is that this is an industrial road, but it also provides access to about three communities on the west coast that have no other access except by water or helicopter, as a matter of fact. By it being an industrial road per se, how does that cover the public traffic that uses those particular roads?

Hon. K. Falcon: Yes, we have contributed to up-keep on that road, because as the member correctly points out, that is a road that sees some portion of the traffic being utilized there as public traffic. She's correct in that assessment.

The other thing that I would really want to emphasize, which I think was the second part of the member's question, is that there is nothing in this act which alters any of the public's ability to use and continue to use whatever access they've had prior to and post the passage of this bill on industrial roads.

[1705]

G. Trumper: Thank you for that. I think the question I would like to ask is.... This is designated as an

industrial road. So is there anything in the act which somehow would be able to...? If in the long term, down the road in the planning, we are going to make that — as there is a hope by the people on Vancouver Island — another access for Vancouver Island, because as a circle route.... I'm looking at that for tourism. Would it change the definition of that road if it were included in the highway corridors?

Hon. K. Falcon: The answer to that question largely depends on how far we as a government wanted to go in terms of deciding what kind of circle route we wanted to have. For example, as a measure we could work with the industrial road administrator and say: "Okay, let's get some signage and do some things there to make that existing industrial road part of a circle route, largely in its existing form, with some signage."

If — what I think the member might have been driving at — we were to decide that it was going to be an alternative route that we wanted to upgrade to essentially a highway, then that's what we would do. We would designate it as a public highway. It would then become a public highway. That would remove it, obviously, as an industrial road once that designation and decision were made.

G. Trumper: I presume that up in the north, the industrial roads they have are also access for non-industrial activities such as private vehicles, etc.

I wasn't actually pushing it forward to be a highway, because then that produces problems for the industry on off-highway vehicles. We wouldn't want to be jeopardizing that aspect, although I do know that a lot of the companies are now changing their vehicles to on-highway vehicles.

I think that's the question I am trying to find out. In the definitions, are we going to be held up as we pursue this, causing issues with the industry and at the same time having private vehicles on it? I know that private vehicles have a big problem if they have an incident on that particular road, because it is very difficult to get help there. A lot of people won't go because they say it is not designated as a road. There's a bit of an issue, sometimes legally, as to whether you're on an industrial road or whether you're on a road that is industrial that's open to the public — if you understand where I'm at. It's confusing, I know, to some people in insurance when they have breakdowns on the road.

I just want to raise those issues. On these roads that are designated industrial, there are some issues for the general public who are travelling those roads because it's the only access. Consequently, I'm concerned that when we are sort of changing the act and putting it in as industrial roads, it doesn't cause some issues for the general public in another area. That's why I'm pursuing that part of it.

[1710]

That really is my last question to the minister. It is an issue of public access and what it actually does to

their insurance, sometimes, on the designation of the road.

Hon. K. Falcon: I guess I would just re-emphasize the point I made before. One thing that might provide some comfort is to re-emphasize that nothing in this act will change anything that was done prior to this in terms of public access on industrial roads and all the kinds of issues you raised. Nothing in this act will change any of those issues. Those issues will still be there. This act is really more from a streamlining and clarifying point of view, trying to make it easier for laypeople to understand those distinctions.

V. Roddick: Re the industrial road, subsection (f): "a privately owned road used by a farmer or resident for the person's own purposes." Could that mean that if it was a large enough tract of land...? This is where I'm wondering where it fits in with the agricultural land reserve. If a landowner amassed a large section of contiguous land made up of several pieces or portions or lots, would that resident or person or farmer be able to put in roads along those lot lines — in effect, subdivide that farmland with roads — under this act as it stands, which then rolls it into the industrial road administrator, which means the individual — i.e., the owner?

This is my concern. Who has jurisdiction here — the owner, the government under Bill 46 or the Agricultural Land Commission? I can see — in fact, I know — in the Pemberton Valley there is an issue right now, and there are underlying issues in my own riding of Delta South where this could occur. Roads can be built along the lot lines, thus breaking up the farmland, actually. I would appreciate the minister's comment on this.

[1715]

Hon. K. Falcon: I really want to underscore that this act does not give permission to put in roads. What this act does is provide a designation of roads. Any wish to put in roads anywhere would have to go through all of the normal, regular processes that one would go through to do that — whether it is Crown approvals, ALR, local government, regional district or whatever the case may be. This is specifically referring to the designation of both existing and potentially new roads.

D. MacKay: I apologize to the minister. I thought I was finished with section 2, but on review of the bill I see I haven't quite caught up. I wanted to look at the definition section of a motor vehicle.

When I look at the old act — the definition of a motor vehicle — and the new definition that is now included, I guess I have to ask the question: are we trying to capture a vehicle that is self-propelled and designed primarily for travel on land — on surface other than rail? Are we trying to capture heavy industrial equipment such as cats and roadbuilding equipment that may not have been captured under the previous definition?

Hon. K. Falcon: The effort here is part of the streamlining effort and plain language and is to try and use some language.... I was thinking of the grade 5 kids I was introducing earlier on and trying to use language they would understand. I'm sure if they looked at the old definition of motor vehicle, they would be fascinated to see that it describes motor vehicles as all vehicles propelled other than by muscular power but does not include cars of electric and steam railways. I'm trying to think of which members were here.... The member from West Vancouver is still not here, but he would certainly, I'm sure, appreciate the electric and steam railways.

What we have done under the new definition is by repealing that rather antiquated definition, we have updated the definition of motor vehicle to those vehicles that are intended to be self-propelled, which is a broad enough term that it allows for any future self-propulsion methods that we haven't perhaps even anticipated. I can assure the member that that would include the member's description of cats and such like equipment.

Sections 2 to 6 inclusive approved.

On section 7.

D. MacKay: Perhaps I should remind the minister that there are others in this room who do recall steam locomotion and electric trains, speaking for myself on that issue, but thank you for excluding me the first time.

[1720]

I wanted to touch on section 7, because I notice section 7 basically repeals sections 13 through 15 under the old Highway (Industrial) Act. That causes me some concern. Once again I'm going back to my former life years ago. What that new section 7 does is remove the requirement that vehicles be equipped and maintained with air brakes or a type of power brake approved by the minister. Basically, what it does is remove some of the safety precautions. It also talks about removal of: "motor vehicles operating on an industrial road during darkness must be equipped with headlights, tail lights, stop lights and clearance lights in accordance with the regulations."

That's what the new section 7 does. It removes those requirements to have these safety features on the equipment. I'm wondering: what have we done with the requirements for those motor vehicles to comply with safety regulations that have been imposed in years past?

Hon. K. Falcon: That's a very good question. The rationale behind doing this is.... The member, first of all, correctly pointed out that under the old sections 13, 14 and 15, we set out statutory requirements respecting brakes, safety appliances and lights on motor vehicles on industrial roads.

What we have done is taken all that and moved it to regulation. The reason we did that is because we

wanted to make sure we had the ability to quickly provide any updates as vehicles change and improve or as we determine that there are new safety features or requirements that we may want to add. We want to have the ability to deal with that through regulation as opposed to having to go back in by legislation and make those changes.

D. MacKay: A motor vehicle travelling on an industrial road without brakes. The offence for operating a motor vehicle without these safety features now falls under regulation. Is that what the minister just advised me?

Hon. K. Falcon: Any violations of the regulations under this act and, in this case, the requirements that we've moved to regulations would be and continue to be violations under the Offence Act.

D. MacKay: That was my next question, then. I was unable to find any offences or any offence penalties under the new act, so I was assuming that the non-compliance with the safety equipment on motor vehicles on an industrial road would in fact come under the Offence Act. I believe that was the minister's answer — that the penalty would be under the Offence Act.

[1725]

Hon. K. Falcon: The old act under section 29 had some very antiquated penalty provisions that, of course, would have made sense perhaps 50 years ago and don't today. For example, it had trespassing offences that were liable to penalties not exceeding \$10 — that kind of thing.

What we did was repeal that. You'll see that under the new section 29, one of the things it does say is: "Without limiting section 5 of the Offence Act..." Essentially, what we mean by that is that section 5 of the Offence Act is the act which sets out general offence provisions. That includes the ability to have fines for offences under the Industrial Roads Act. It has got penalties available up to \$2,000, I think it is, or six months in prison. That reference to it in the new section 29 essentially engages that Offence Act section, which is the section we need.

Sections 7 to 9 inclusive approved.

On section 10.

D. MacKay: Dealing with section 10, I notice that we have removed the provisions allowing the minister to appoint a person to inquire into an accident that might occur on an industrial road. If the minister does not appoint somebody to investigate a bodily injury accident on an industrial road, who do we leave it up to, to investigate those accidents when they do happen?

[1730]

Hon. K. Falcon: The reason that particular provision has been changed is that the provision is essen-

tially redundant. In other words, the provision to report to the minister with respect to an incident regarding an industrial road report is no longer required, because we already... If it's a workplace accident, for example, then the WCB would automatically be engaged. If it's not — if it's a non-workplace-related incident — then that would engage the attention of the police, so there is no requirement to report to the minister.

D. MacKay: I guess that makes sense, then. If an accident takes place on an industrial road that is used primarily for the transportation of ore concentrate, it makes sense, I guess, that the Workers Compensation Board would investigate the accident. I am assuming that the same would apply if there was a fatality on an industrial road. The police would be involved. The coroner would be involved, as well as the Workers Compensation Board?

Hon. K. Falcon: That's correct.

Sections 10 to 17 inclusive approved.

Title approved.

Hon. K. Falcon: I move the committee rise and report the bill complete without amendment.

Motion approved.

The committee rose at 5:32 p.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

Bill 46, Highway (Industrial) Amendment Act, 2004, reported complete without amendment, read a third time and passed.

Hon. G. Abbott: I call committee stage debate of Bill 47.

Committee of the Whole House

TRANSPORTATION ACT

The House in Committee of the Whole (Section B) on Bill 47; L. Stephens in the chair.

The committee met at 5:34 p.m.

Section 1 approved.

On section 2.

M. Hunter: Section 2(1)(d) authorizes the minister to make grants and contributions. I wonder if the min-

ister could explain to whom and for what purposes grants and contributions might be anticipated.

[1735]

Hon. K. Falcon: What we've done here is essentially try to provide some greater clarity around this. What we've done is use the existing language that we had before this, but we've added the term "contributions." So we expanded the narrowness of a grant being the only provision to that being grants and contributions. As a concrete example, the contributions we would make to the rapid transit line that just got voted down would be considered a contribution. We wanted to ensure that the language reflects the reality of the terminology that we use today.

M. Hunter: The example is, I guess, a special one. In the normal course of the business of the ministry are grants, and now contributions.... I understand the clarification and perhaps expansion of the language. Are grants and contributions made to municipalities on a regular basis for projects that are complementary to transportation initiatives?

Hon. K. Falcon: It's not uncommon for us to have joint road projects, for example, with municipalities where together we engage in different cost-share improvements that may be made that would be mutually complementary. This is more to capture examples of where.... For example, we recently announced a grant to the Comox Valley Airport for an expansion of their international terminals. It's those kinds of things that allow the ability to make those kinds of grants or contributions.

M. Hunter: If I can just be clear, in my own community.... The minister may not be aware of the minutiae of everything that the Ministry of Transportation does and every piece of pavement that gets dug up, but in my community a road by the name of Brechin Road, which is the main connector from Highway 19 to the ferry terminal at Departure Bay in Nanaimo, is currently being rebuilt under a joint city of Nanaimo–Ministry of Transportation project. Is that the kind of project to which the grants and contributions might refer?

[1740]

Hon. K. Falcon: No, that would just be a joint road project similar to what I had mentioned. If, for example, the Nanaimo airport was looking to do some kind of expansion and came to government looking and presented a solid business case that made the case, etc., and were funds available and the business case was made and it made sense for the province.... If a contribution was then made, that kind of grant is the kind of example this is capturing.

M. Hunter: I thank the minister for his invitation. I will pass that on.

If I can move to section 2(1)(e), and perhaps I'm just.... This authorizes the minister to enter into ar-

rangements or agreements or for the payment or sharing of the cost of anything related to provincial public undertakings. Going back to my local Nanaimo example, is it under that empowerment of the minister that Transportation can enter into joint projects with municipalities?

Hon. K. Falcon: The answer is yes.

Sections 2 and 3 approved.

On section 4.

M. Hunter: I just want to ask a couple of questions on this competitive processes section, on section 4(2): "The minister need not invite tenders for a project referred to in subsection (1) if (a) delay would be injurious to the public interest." Who makes the judgment about what is injurious to the public interest?

Hon. K. Falcon: That would be the minister that makes that decision. I guess it is probably easier to explain this one by way of example.

That would mean, for example, if a bridge was washed out in a flash flood and it is a requirement of the ministry to get thousands of people that may be stranded on the other side back to their normal lives.... It may be that under those kinds of circumstances we won't, obviously, have time to go through the normal competitive tendering process. That's what this provision is intended to ensure — that we have the ability to act.

M. Hunter: Is this provision a continuation of the Ministry of Transportation and Highways Act? Is similar language found in that act?

Hon. K. Falcon: Yes, this is, in fact, exactly the same language as it was prior.

M. Hunter: I'd like to move to section 4(2)(f), where the minister is relieved from that obligation by order of the Lieutenant-Governor-in-Council. Under what circumstances is the minister in this competitive-process issue going to be relieved from whatever obligations there might be? In what circumstances do you foresee that relief being granted?

[1745]

Hon. K. Falcon: The utilization of that option would be very rare indeed. But in special circumstances where cabinet may contemplate sort of an overarching provincial interest.... I guess, again, by way of example is probably the best way to do it. Any duties to a first nation that would be flowing out of our obligations to consult and accommodate would be an example that springs to mind, which would explain why that provision is there.

Sections 4 to 6 inclusive approved.

On section 7.

D. MacKay: Looking at section 7, under "Division 3 — Dealings with Land," it says: "The minister may acquire, hold and maintain land." Under what conditions would the minister acquire, hold and maintain land? What does that section cover off?

Hon. K. Falcon: No, this section just ensures that we have the ability to purchase lands that may be necessary for our public transportation needs and any of the sort of associated responsibilities necessary to ensure that we can continue to meet the expectations of the public in terms of our transportation requirements.

D. MacKay: The minister touched only on the purchase of land. I assume that would also include expropriation of lands where necessary. And if the land that was expropriated was within a municipality, would the provincial government be looking at giving a grant in lieu of taxes or paying taxes on the land that was being held by the provincial government, if in fact it was within the municipality?

[1750]

Hon. K. Falcon: When we acquire land in a municipality for the purposes of a highway, we do not pay tax on that because it automatically becomes a highway right-of-way. Therefore, tax is not payable.

Sections 7 to 13 inclusive approved.

On section 14.

R. Masi: On section 14, I wonder if the minister could give me a definition of the term "improvement."

Hon. K. Falcon: Examples would include things like fences, wells, drainage improvements, retaining walls — those kinds of things.

R. Masi: Assuming, then, that fencing is considered an improvement, there's a certain concern relative to subsection (6). If I could have clarification.... If in fact there are repairs to miles of fencing, that would be charged to the owner of the property. Is that correct or not correct?

Hon. K. Falcon: Really, there are only two instances in which that would be engaged, whereby the landowner would have responsibility for the ongoing repair costs. The first would be where that's something that we have come to by agreement between the ministry and the landowner. The second is where, in the ministry's estimation, the benefit of the improvement largely benefits the landowner. Therefore, as a result of that benefit predominantly availing itself to the landowner, they are responsible for ongoing repairs.

Sections 14 to 51 inclusive approved.

On section 52.

M. Hunter: Noting the hour, I will try and be brief. Section 52(1) defines "controlled area" as being an area 800 metres in radius from an intersection. That seems like an awfully large area for the ministry to control.

Can the minister give a technical explanation of why we need $\frac{80}{100}$ of a kilometre to control? What's the purpose of that large an area?

[1755]

Hon. K. Falcon: First of all, there is nothing new in this section. The historical reason as to why this section is.... Let me rephrase that actually, because what I just said wasn't quite correct. There is nothing new with respect to the 800-metre radius for intersections. There are some other new things, which I will talk about in a moment.

The historical reason as to why that's there is because it's been the experience of the ministry over the decades that when we're making a massive transportation investment into a highway, we want to ensure that we protect that investment by having that radius in place. Without that protected radius at intersections, what you could have then is a development that could crowd right up to the highway, and that could jeopardize our ability in the future to deal with growth on the highway corridor, the ability to make changes to deal with changes in traffic patterns, etc. That 800-metre radius hasn't changed. That is something that continues to be the defining radius of protection.

What is new, though, and what I think is significant, particularly for local governments, is that for the first time it allows us to develop joint plans with local governments that would then allow the local governments to be exempted from this provision. What it does do is ensure that we have the ability to work with local governments to provide options for them as long as we are assured that the major long-term investment we're making is protected. That's the purpose of this provision. It doesn't change the radius requirement, but it does allow us to put alternative plans into place to work with local governments and better allow them to realize development opportunities while protecting the public interest in doing that.

Sections 52 to 61 inclusive approved.

On section 62.

M. Hunter: I know I'm not popular, but I would like to ask one more question on section 62(2). Can the minister confirm whether or not the language used in this on line 5...? It says the minister may authorize any person "...to use, occupy in any manner and for any purpose, including a commercial purpose, the whole or any part of a provincial public highway, or land or improvements related to a provincial public highway." What I am looking for here is confirmation or not that this will allow the use of rest areas for commercial

purposes if such arrangements can be reached, but I'm curious as to what "or land or improvements related to a provincial public highway" means. Does that mean that the minister could authorize commercial activities for a commercial purpose on land adjacent to a highway but not owned by the Ministry of Transportation?

[1800]

Hon. K. Falcon: The short answer is yes, it would include commercial rest stops.

Sections 62 to 65 inclusive approved.

On section 66.

V. Roddick: I just wanted some clarification on 66(2), "Extraordinary traffic." I want to make sure how, for instance, Delta municipality could possibly apply to the provincial government on Highway 17 between Highway 99 and the Deltaport road for the extraordinary traffic. What is affecting that highway?

Hon. K. Falcon: This section is broad enough to engage the situation that the member discusses. Having said that, I would just remind the member that the highway system is there to actually move people and goods. It's something that we can do in extraordinary circumstances, but it's something we don't do until we have a very thoughtful, well-thought-out process in considering something like that.

V. Roddick: Yes, that is right — for the thoughtfulness. I understand that this act is supposed to facilitate long-term highway and corridor planning between local governments and the province. I just want to have

the minister clarify and assure this member that that will take place.

Hon. K. Falcon: I will confirm that we will work with municipalities to plan along highway corridors, for sure.

Sections 66 to 163 inclusive approved.

Title approved.

Hon. K. Falcon: I rise to report the bill complete without amendment.

Motion approved.

The committee rose at 6:05 p.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

Bill 47, Transportation Act, reported complete without amendment, read a third time and passed.

Hon. G. Abbott moved adjournment of the House.

Motion approved.

Mr. Speaker: The House is adjourned until 2 p.m. tomorrow.

The House adjourned at 6:06 p.m.