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5TH SESSION, 37TH PARLIAMENT

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Afternoon Sitting

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THURSDAY, OCTOBER 21, 2004

The House met at 2:04 p.m.

Introductions by Members

K. Stewart: It's my pleasure today to introduce approximately 30 students from Westview Secondary School — the most prestigious area of west Maple Ridge is where they come from — and their teacher, Ms. Cyr. I look forward to visiting with them later. Will the House please make them welcome.

Hon. S. Brice: In the gallery this afternoon is a life-long friend of mine and former Vancouver parks board member, Mary Ann Fowler. She's here with her sister Gloria McLeod from Victoria and two friends, Donna Battye and Pauline Ray, also from Vancouver. I would ask the House to make them welcome.

J. Reid: On behalf of our colleague from North Island, I would like to introduce in the House today George MacLagan and the 1st Willow Point Scouts. They are in Victoria working on their chief scout designation. Incidentally, I'm told that 1st Willow Point Scouts is the member for North Island's scouting alma mater. Would the House please make them welcome.

[1405]

D. Hayer: I am pleased to rise in the House to introduce two special guests. Gary Brar, a grade 11 student from Terry Fox Secondary School, is the son of a good friend of mine, Jim Brar. Joining Gary is his friend, Ravi Naidu. Would the House make them very welcome.

Mr. Speaker: Hon. members, two Legislative Assembly employees are with us in the members' gallery this afternoon: Suzanne Murphy, multimedia special projects manager, Hansard Services; and Mary Ann Murphy, reference librarian, Legislative Library. Both employees are retiring this year after 30 years of service. Please join me in wishing them many happy years ahead and thanking them for their loyalty and dedication in serving members and staff of this Legislative Assembly.

Statements (Standing Order 25B)

SURREY BUSINESS EXCELLENCE AWARDS

D. Hayer: Small Business Week is a wonderful chance to recognize those businesses, business people, employees and volunteers who are doing great things in this province. In Surrey the chamber of commerce celebrates their contribution to our local economy with its business excellence awards held each year in my riding of Surrey-Tynehead.

Last night the following businesses took top honours in seven categories: student entrepreneur of the year — Smooth Media; business excellence with one to

ten employees — Redline Pro Manufacturing; business excellence with 11 to 15 employees — Integrated Paving Concepts Inc.; business excellence, over 50 employees — Teal-Jones Group, a very large family-operated forest products company employing over 1,200 workers in my riding of Surrey-Tynehead and run by Tom and Dick Jones; new entrepreneur of the year — B.C. Bikes Express; business person of the year — Yvonne Hogenes, owner-operator of Malary's Fashion Network; and the not-for-profit of the year — South Fraser Child Development Centre, a group that has been doing great work with special needs children and that allows me the honour of chairing their Christmas party sponsored by Rotary Club of Surrey since 1988.

A special mention of the following finalists, who are also winners: IYA Enterprise International; Singh Sporting Goods and Gear; Ranger Wheelchairs/Access Mobility; White Rock Design and Print; Columbia Concrete Products Ltd.; H.Y. Engineering Ltd., located in my riding; B & B Contracting; the *Leader* newspaper; Canadian H2O To Go Inc.; Kickstart Communications Inc., located in Surrey-Tynehead; Phoenix Drug and Alcohol Recovery and Education Society; Progressive Inter-Cultural Community Services Society, PICS; Bruce McAuliffe of the *Leader* newspaper; Gary Hollick of *The Now* newspaper.

I would ask that all members of the House join me in congratulating all these outstanding businesses, entrepreneurs, their employees and volunteers, who make our city and this province the best place to live, work and do business in.

ALBERNI DISTRICT FALL FAIR

G. Trumper: In many parts of British Columbia, fall fairs and exhibitions are important events that bring communities together. They are a chance to observe and compete in sporting events, and in food and craft fairs. Fairs even provide a chance to enjoy the amusement park rides.

I am very proud to report that the fifty-ninth Alberni District Fall Fair was an outstanding success. The Alberni District Fall Fair association won five of the 14 awards at the provincial annual meeting of the B.C. Association of Agricultural Fairs and Exhibitions. The fair won the following provincial awards: presentation of your fair for communities of 10,000 to 20,000; best idea submitted to *Livewire*, which was somebody called Brenda Smith who's a very longtime volunteer; distinguished service went to Butch Marocchi; the most improved fair; and achievement certificates.

Our local fair brought many activities and events to my community, including the livestock shows; the logger sports, which takes place on the Sunday; tractor pulls; home and business shows; the international food fair; the amusement rides. And very importantly, it highlights the 4-H Club, which has a very strong membership in the Alberni Valley.

[1410]

The Alberni District Fall Fair would not have the success it has had over the years without the volun-

teers who spend countless hours planning for and working at the fair. They are already working on next year's fair. To all of those who volunteer their time to the Alberni District Fall Fair and many of the fall fairs in British Columbia: I want to thank you.

SMALL BUSINESS IN B.C.

R. Lee: I rise today in the House to once again highlight the prosperity and growth of British Columbia.

This week is the twenty-fifth anniversary of Small Business Week in Canada, celebrating and recognizing the vital role that small business plays in British Columbia and Canada as a whole. It's a vital role indeed, with small business accounting for 98 percent of all businesses in British Columbia, employing 970,000 people and representing 58 percent of all private sector jobs.

This government committed to and fulfilled the new-era commitment to create a more favourable environment for business by cutting red tape and the regulatory burden by one-third within three years. I'm happy to see that we have achieved this goal, with more than 173,000 regulatory requirements cut for a net reduction in regulations of 37 percent.

The figures prove that we have restored the competitive economic climate in this province. We are going in the right direction — 12,900 new jobs in September, the highest level of business optimism in Canada since September 2003 and the highest small business growth rate in Canada over the past two years.

Mr. Speaker, I see the results in my own riding of Burnaby North. For shops from the traditional area at the Hastings to the Brentwood Town Centre, for companies from the Still Creek area to Canada Way, for real estate development everywhere.... Businesses are thriving.

The future for small business in B.C. is even brighter with the announcement yesterday by the Minister of Finance that effective today, the provincial sales tax is cut from 7½ percent to 7 percent.

In celebrating Small Business Week, let's also recognize the Burnaby Board of Trade and the Heights Merchants Association for their significant contributions in promoting small businesses in Burnaby.

Mr. Speaker: That concludes members' statements.

Oral Questions

TRACKING OF DEATHS DUE TO PROBLEM GAMBLING

J. MacPhail: According to the Solicitor General's own report on problem gambling, Internet gambling is a serious risk to youth. Despite that, the government plans to expand Internet gaming revenues alone by 600 percent in only two years.

Can the Solicitor General tell us what steps he's taking to track the impact of this massive expansion of Internet gaming and what impact that expansion will have on young people, particularly on youth suicides?

Hon. R. Coleman: The Lottery Corporation, as we've discussed earlier this week, is going on line with a suite of products. That suite of products does not include on-line casinos, will not include on-line casinos and is never anticipated to include on-line casinos, which is the aspect that a number of people are concerned about.

The site itself has a number of protections in it for age, etc., that I have outlined to the member. I've also offered her the opportunity — or I will offer her the opportunity, if she wishes — to sit down with the people from the Lottery Corporation that put this together.

B.C. Lottery Corporation is the responsible organization for the conduct and management of gaming in the province. They are in that position because we changed the gaming act in 2002 so that the Lottery Corporation, arm's length from political influence, would do their job. Within is the fact that they would do it in a responsible manner in protecting the public.

The site itself has spending limits as well, as the member knows, and has the ability to make sure that the third-party verification takes place and, in addition to that, that the players are 19 years of age or older. With those restrictions and everything else, we're comfortable with what they've accomplished.

They will, of course, as they do with all their gaming initiatives, have a program for responsible gaming initiatives, watching this product line as they do all other product lines.

[1415]

J. MacPhail: My question was a serious question about youth suicides related to gambling. The minister's own study shows a direct correlation between Internet gaming and the risk to youth. His own stats show that he is planning on getting a 600 percent increase in Internet gaming revenues.

According to the Solicitor General's service plan, it has no target to track problem gambling for this year. That has disappeared from his service plan for this year — no tracking of problem gambling. That's despite the fact that they're increasing Internet gaming by 600 percent. They will now be selling gambling products directly into a potential 920,000 homes. That's close to a million new gaming outlets.

Other provinces track the number of deaths related to gambling. In Alberta, gambling-related deaths account for 10 percent of all suicides. In Nova Scotia, they account for 6.3 percent of suicides. Can the Solicitor General tell us how this province plans to track the number of deaths that occur as a result of problem gambling?

Hon. R. Coleman: We participate in gambling prevalence studies on a regular basis, as do other corporations across the country involved in gaming. There was one done in 1993, in '96 and in 2003. The results show that gambling prevalence in British Columbia has remained the same over that ten-year period.

Not only do we do prevalence studies, but we're looking at opportunities to create centres of excellence

with regards to how we as a province can do our research in conjunction with other jurisdictions. We have a 24-hour help line for information and referral for people who have difficulty with gaming. We've doubled the amount of money we put into problem gaming.

A total of 31 professionals are contracted in British Columbia, with programs across the province. Professional clinical counsellors provide provincewide counselling service at no cost to the client. Counsellors meet with clients during evenings and weekends as required and will travel to meet the clients in their own communities. Prevention workers work with health organizations, schools, first nations communities, seniors and youth groups, and the gaming industry to provide information on gambling addiction and related issues.

Awareness materials include posters and brochures translated into various languages in the province. The corporation itself has a number of self-exclusion and monitoring programs on top of that, which they also provide to the people of British Columbia. We in the ministry...

Mr. Speaker: Thank you, Mr. Minister.

Hon. R. Coleman: ...have developed partnerships for responsible gaming across the industry.

Mr. Speaker: Thank you.

J. MacPhail: Perhaps the Solicitor General should read his own service plan and see that this year, unlike previous years, his government is not tracking problem gambling — go to his own service plan.

My question was about tracking deaths due to gambling, and the Solicitor General didn't answer it. The reason why he didn't answer it is because this government has absolutely no way of tracking these deaths. Unlike other provinces, the government doesn't consider problem gambling to be a factor in someone's death.

Last year Patricia Cairns died as a result of her gambling addiction. There were many horrifying news stories of her death and how it was related to gambling addiction. No mention of gambling was made in the coroner's report on her death, because unlike other provinces, in British Columbia there is nothing to compel the coroner to identify gambling addiction as a cause of death.

Now, here's a government that has more than doubled the revenues from gaming and has expanded gaming like never before, and Internet gaming is going to increase 600 percent in two years. To the Solicitor General: how can the Solicitor General justify not tracking gambling-related deaths when, by his own admission, his massive expansion of on-line gaming puts young people at risk — his own study?

Hon. R. Coleman: The issues in and around problem gambling, as I've outlined to you, are covered in a

number of programs in this province. They are covered with monitoring; they're covered with self-exclusion programs; they're covered with setting purchasing limits, etc. The member focuses on Internet gaming because it's a service to our clients across this province who actually buy these things already and do this on the Internet.

[1420]

If there are additional programs that we need to enhance as we go through this, which we review all the time, we will do so.

RETAIL MERCHANTS ASSOCIATION'S KNOWLEDGE OF SALES TAX REDUCTION

J. Kwan: Earlier today we filed an FOI request to the Ministry of Finance, asking for information relating to all contacts made between the office of the Minister of Finance and his ministry with the Retail Merchants Association. But maybe the Minister of Finance can speed things up. Can he come back to us later this afternoon and tell us who in his ministry met with the Retail Merchants Association of B.C. in advance of his tax announcement yesterday?

Hon. G. Collins: I answered that question yesterday in the corridors. I'd be glad to send a transcript of my answer. But just to refresh the member's memory, there was no contact — no mention to anybody outside of the normal people that are involved in developing tax policy — in advance of that announcement.

J. Kwan: I believe, I believe.

The Merchants Association had a press release on the subject sitting on...

Interjections.

Mr. Speaker: Hon. members, the member for Vancouver–Mount Pleasant has the floor.

J. Kwan: Thank you, Mr. Speaker.

...the media fax machines before the minister had even finished introducing the legislation. Either they'd been given a heads-up on the story, or they'd been able to defy the laws of human kinetics. If they did not have an advance on the story, that's a very serious breach of confidentiality and potentially a breach of privilege in this House. Remember, this is the minister's office that leaked confidential information on B.C. Rail. I know the minister doesn't like to be held accountable in this House, and he is desperate to adjourn this House after only eight sitting days — five weeks early.

Can the minister tell us what steps he is going to take to determine how the Retail Merchants Association knew before anyone else that the government was making a significant change to tax policy?

Hon. G. Collins: They wouldn't have known anything other than what people in this chamber saw

when I stood up to make the announcement. I think they've already said that. This was not an announcement that was a huge.... It's not like nobody had been talking about this possibility. In fact, there was lots of speculation....

Interjections.

Mr. Speaker: The Minister of Finance has the floor.

Hon. G. Collins: Thank you, Mr. Speaker.

The possibility of the half-percent rollback has been discussed, well, for over two years. It had certainly been discussed at least a thousand times, I think, since the first quarterly report was released in early September.

Interjections.

Mr. Speaker: Order, please.

Hon. G. Collins: That announcement was made yesterday. They saw it when you did. One of the things you can tell — that they didn't have advance notice — was that they actually got the number wrong of the value of the tax reduction. They prepared their information, I guess, in preparation for an announcement. They were not advised before anybody else was.

PROVINCIAL NOMINEE PROGRAM AND RECRUITMENT OF PHYSICIANS

K. Stewart: My question is to the Minister of State for Immigration and Multicultural Services. As the British Columbia economy continues its tremendous expansion, there is a demand and increase for skilled workers and professionals. In my community we have doctors as far away as South Africa who wish to practise in British Columbia. Like many of us, they know that our community is the best place on Earth.

To the minister: what measures is this government taking to add doctors to the list of skilled workers eligible for the provincial nominee program?

Hon. P. Wong: I thank the member for the question. The provincial nominee program has been a tremendous success. As the member knows, this program was developed to help employers address the critical skill shortages in this province and to attract investors to come to invest in this province.

[1425]

So far we have successfully nominated close to 700 people under this program. One of the great successes is to bring in registered nurses to this province. We are looking forward to expanding this provincial nominee program. We're working closely with the Ministry of Health Services and the College of Physicians and Surgeons of B.C. They play a very important part in this role. We will continue to work with them to facilitate this issue. I'm very excited about the possibility of expanding this program and adding the physicians on this list.

LEGAL AID FUNDING

P. Nettleton: The Attorney General, to date, has failed to provide any detail with respect to his promise to push for a restoration of legal aid funding. My question, simply, to the Attorney General at this time is: is he prepared to provide us with some detail today with respect to his commitment, his promise, to push for restoration of legal aid funding?

Hon. G. Plant: Well, I answered this question earlier this week. I am working hard to ensure that we can provide legal services across the province to those who can least afford them. I am very proud of the work the Legal Services Society has done within the new statutory framework to expand the idea of legal aid to include a wide range of services that involve things like providing information, providing representation in some circumstances and providing other forms of assistance.

The family court duty council project is a very good initiative. It's an initiative that I'm working on to see if we can expand and perhaps even put into place on an ongoing basis. That's one example of one kind of initiative that I'm working on. If the member, who I know is a former legal aid lawyer himself, has specific ideas about initiatives that we should work towards implementing and funding, I would be delighted to hear his ideas.

PROTECTION OF MOUNTAIN CARIBOU

B. Suffredine: A number of my constituents have expressed concerns about the impact of development on the mountain caribou in our region. Recently the Forest Practices Board released a report calling for strong government action to tackle threats to the survival of B.C.'s mountain caribou. Everyone wants steps taken that will be effective. Can the Minister of Water, Land and Air Protection tell us what action he intends to take to protect the mountain caribou?

Interjections.

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

Hon. B. Barisoff: I want to thank the member for expressing the concerns from the people from Nelson-Creston about the mountain caribou. Actually, I am excited today to announce that we're putting in \$800,000 in new money and a new provincial cross-ministry coordinator to look after the mountain caribou and the other endangered species. Again, I want to thank the member for bringing this to my attention along with the Forest Practices Board.

[End of question period.]

Orders of the Day

Hon. G. Collins: I call Committee of the Whole for consideration of Bill 66.

[1430]

Committee of the Whole HouseMOTOR VEHICLE AMENDMENT ACT, 2004
(continued)

The House in Committee of the Whole (Section B) on Bill 66; J. Weisbeck in the chair.

The committee met at 2:32 p.m.

On section 2 (continued).

J. MacPhail: Subsections (2) and (5) of section 2 indicate that the superintendent may decide to let the person get their licence and drive as long as they are participating in a course or a program. On what basis would these sections permit the superintendent to let one driver continue to drive and another be refused a licence?

Hon. R. Coleman: I guess you could say that's why we have to have some flexibility for the superintendent. Everybody deals with issues in and around addictions differently, depending on themselves. Some people need counselling. Some people actually need addiction services. For the superintendent it would be based on the opinion of a qualified addiction counsellor, taking into account a couple things: (a) what the problem is with alcohol, and (b) the likelihood of somebody not recognizing that problem and driving. It's one of those things where I know that on the administrative side, as we've done with administrative penalties in the past, the superintendent has to take things in balance when he's making these decisions.

J. MacPhail: All right. Maybe the minister could provide me with an example — no names or whatever — of two different circumstances that would provide two different outcomes.

[1435]

Hon. R. Coleman: I'll try and get this right. Let's use two examples of people dealing with alcohol. In the first case, somebody commits the offence of impaired driving, gets charged and is convicted of impaired driving. They get a suspension under the Criminal Code. Then they are in our system. If there is a history of other alcohol-related offences on their driving record, they can be put right into.... They have to go into rehab, into the treatment program right away because they've been convicted of a Criminal Code offence.

A second example similar to it is when a doctor might report to us that a person has a heavy alcohol problem and that the likelihood of their driving puts the public at risk. Then based on the assessment by the professional counsellor, we can decide to either pull the licence or put them into rehab. Then the fear of losing the licence changes their behaviour, and we can put them into some program. Those would be two ex-

amples where the discretion would be different, depending on the information available to the superintendent.

G. Trumper: I thank the member for Vancouver-Hastings for giving me the opportunity.

To the minister. This is a general question, because it is actually not in Bill 66. The question that I ask, and one I certainly support, is why we haven't done anything about lowering the blood alcohol level to .05.

Hon. R. Coleman: Through our consultation process, we looked at the blood alcohol level of .05 for a provincial offence. That wasn't supported by the B.C. Association of Chiefs of Police. It wasn't supported by the Mothers Against Drunk Driving to have a provincial offence at .05. The reason for that is they felt that was a move to decriminalization and away from the Criminal Code offence charges on impaired driving. So that's why we didn't use .05.

The other side, which is something that groups including MADD would like to see, is a lowering of the blood alcohol level down to .05 for a Criminal Code offence in Canada. I've stated publicly that I have no problem supporting that initiative, with the justice ministers. However, like I said to the Leader of the Opposition earlier, it hasn't been brought to the table in any major way for any justice ministers' meeting that I have been at. Frankly, we haven't had a justice ministers' meeting in some time because of the different roll-over of government. There was supposed to be one, I think, starting next week. It's been cancelled and may take place in January. It would be an item, in a general discussion at that meeting, that I would intend to bring up at the table.

G. Trumper: Thank you, minister, for the answer. I appreciate the complications around it. I would certainly go on record as in a previous.... I'd hardly call it a career, but in a previous job I had.... I think this is something that certainly, nationally, we should be looking at to deal with the issue of drunk drivers on the road who seem to think that .08 is just fine and are quite often over that.

J. MacPhail: Mr. Chair, I'm going to move an amendment to this section, to 25.1(2). Perhaps there is a copy available, if the Table wouldn't mind.

I am moving an amendment to section 25.1(2) to delete the discretion of the superintendent to "require a statement in, endorsement on or attachment to the person's driver's licence...." My amendment now reads:

[(2) The superintendent ~~may~~ **must** require a statement in, endorsement on or attachment to the person's driver's licence, adding as a condition of the driver's licence that the person must, in order to continue to hold the licence, attend or participate in and complete, to the satisfaction of the superintendent, a course or program referred to in subsection (1) if it is not, in the superintendent's opinion, contrary to the public interest to allow the person to hold a driver's licence while attending or participating in the course or program.]

[1440]

On the amendment.

J. MacPhail: Mr. Chair, it is absolutely important that we send the strongest message possible that when people drive drunk, they are going to suffer serious consequences — this being one of them. I don't think it is the area for discretion by anybody to allow any opting-out.

Amendment negated on division.

J. MacPhail: Perhaps the minister could explain section 25.1(5).

Hon. R. Coleman: This allows the superintendent to take the licence, and as a condition of returning the licence, the person has to complete the program.

J. MacPhail: How does the superintendent express his opinion? If it is, in the superintendent's opinion, contrary to the public interest to allow the person to hold a driver's licence while attending, how does the superintendent express his opinion?

Hon. R. Coleman: The superintendent of motor vehicles develops and implements all kinds of policies. They're posted on the website. This policy would also be posted on the website so people would have an understanding of it. My experience, though, is this, and it's just an opinion. I think that having a superintendent of motor vehicles as a statutory authority and giving them the discretion — those who have the information in front of them and can consult with people like professionals with regard to addiction services and issues that people may have with regards to being able to be trusted to be put back on the road and what have you.... It's highly beneficial in a number of ways.

One, statutory authority means that none of us in this chamber can phone and tell a statutory authority what to do or not to do on any specific decision, which actually keeps it at arm's length from influence — which is very, very important. On the other aspect of it, the office is actually a credit to the operation of government — and has been for many, many years — with how it handles these cases and files and tries to find initiatives that can help with public safety, whether it be the ability to suspend a driver's licence on the side of a road in the case of a street race or whether it be to develop programs with regards to impaired driving.

The superintendent, being in a statutory position, has to have some latitude with regards to the public interest, and I think that is an important function of the office.

[1445]

J. MacPhail: What's the implementation plan for this? It's interesting. The minister is talking about these policies that will be in place. They'll be on the website. What is the effective date and commencement process

for this? What's the plan for proclamation, and what's the implementation plan?

Hon. R. Coleman: It's anticipated that the 24-hour prohibition and the seizure of vehicle and fines for that will be implemented by December 31, 2004. Most of the other things will be in place by April.... We're expecting all of the other things, including the rehab programs, to be in place no later than April 1, 2005.

The reason for that is that for some of it — especially the vehicle impoundment and prohibition and the change of fines and that sort of thing — there have to be some system changes take place at the department of motor vehicles, which is ICBC. So we have some system changes to get done there in order that we're in a position to track the programs and track the fines and that sort of thing.

They're working to those deadlines as being the optimum outside dates. If they can get it done earlier, they will.

J. MacPhail: I'm going to propose an amendment that the Clerks have. Perhaps I could ask the Clerks to indulge me and provide a copy to the minister.

I'm proposing an amendment to section 25.1(5) of the Motor Vehicle Act to delete the discretionary aspect of the requirement for the superintendent.

~~[(5) If it is, in the superintendent's opinion, contrary to the public interest to allow the person to hold a driver's licence while attending or participating in a course or program referred to in subsection (1), a person has failed a roadside breath test, the superintendent may must require that the person attend and complete, to the satisfaction of the superintendent, a course or program referred to in subsection (1) (a) or (b) before being eligible to apply for a driver's licence under section 25.]~~

On the amendment.

J. MacPhail: I'm deleting the discretion aspect. Subsection (5) will read now: "...the superintendent must require the person to attend and complete, to the satisfaction of the superintendent, a course or program referred to in subsection (1)(a) or (b) before being eligible to apply for a driver's licence under section 25."

This means that there is a mandatory requirement for treatment programs for someone who has failed a roadside breath test before having their licence reinstated. We are not breaking new ground in this amendment, and I urge everybody to support it.

Amendment negated on division.

J. MacPhail: On section 25.1(6). Can the minister please explain this? It now reads: "(6) A person who is required to attend or participate in and complete a program referred to in subsection (1) must pay the prescribed fees."

Hon. R. Coleman: It's pretty clear. Anybody that is put into a program has to pay. It's a user-pay system. In the first four years of it, it will — as it ramps up and

takes care of itself — probably be given a budget lift to about \$800,000 a year for the four-year period, with the expectation at the end of four years that the user-pay system will be covering its own costs. But we're prepared in the early days, as we put it in place, to make sure that if there are any shortfalls, they're taken care of.

We will prescribe the fee for the program. Everybody will be charged the same. Some will get counseling, and some will get rehab — whatever the case may be. But the prescribed fee will be the responsibility of the person serving the offence.

[1450]

J. MacPhail: Clearly, the minister has done a workup on the range of fees and costs, etc. Perhaps he could share with us what they anticipate the cost of these programs to be.

Hon. R. Coleman: Our projections are that the rehab programs will cost each individual in the range of \$800. For the interlock program there will be a \$125 installation fee, a charge of \$95 a month while it's on the vehicle, a \$25 fee to take it out and a \$150 administration fee.

J. MacPhail: That sort of anticipates my question. Is the minister saying that this clause also applies to the interlock device?

Hon. R. Coleman: Yes, it does.

J. MacPhail: What's the experience in other jurisdictions around the user-pay system? What are the consequences of having a user-pay system?

Hon. R. Coleman: We're the only jurisdiction in Canada that's going to full cost recovery for user-pay programs like this for people who have been convicted of impaired driving. I would suspect, if nothing else, being that it is going to be a lot more expensive than it is in other jurisdictions, that we've increased the deterrent with regards to impaired driving.

J. MacPhail: Why did this government decide to buck the trend of other jurisdictions? What analysis has been done in terms of the implications for going to a full cost recovery from users?

Mr. Chair, I want to make clear that the nature of my questions doesn't mean in any way that I'm taking a side on this issue. I just want to know what the minister has done to mitigate against negative consequences. I'm thinking particularly amongst people whose employment will be affected by this.

Hon. R. Coleman: There are a couple of issues there. One, our consultation supported full user-pay. We happen to feel that the people should pay for the consequences of their crime, and they shouldn't be subsidized for the consequences of their crime by the taxpayer.

With regards to the other aspect, as far as people being able to work, that's not a new challenge with regards to impaired driving. Whether we have this program or not, when you are prohibited, you can't drive. People who don't have a driver's licence shouldn't be driving. What we've done with this act, as you know, is actually made it a bit more punitive if you think you should be out doing that. It was certainly one of the things identified by every group during consultation — that driving while prohibited had become something that was not being pursued by courts and law enforcement because of some of the understandings around the law and some of the penalties. That's why we've streamlined that to improve it.

[1455]

J. MacPhail: Why did other jurisdictions decide not to do this?

Hon. R. Coleman: My understanding is that it's for various reasons. Some of them started out as cost recovery, and then costs crept up, so the governments of whichever jurisdictions decided that they would put a cap on it and have government pay the difference. Some of them tied some of these things into their health care and health care issues.

We felt, frankly, that if you're going to be an impaired driver in British Columbia, we shouldn't subsidize your having to improve your behaviour — that you should have to meet your responsibility as a person who's broken the law. That's why we've gone to full cost recovery. Given the stresses that already exist on the health care system, we feel it's better to go out on a contract basis to provide the counselling and rehab services, so we can make sure they're there for the people that need it.

J. MacPhail: Will there be any government involvement in determining the fees?

Hon. R. Coleman: Yes, we will determine the fees by regulation; we will have that involvement. We will actually set what it is for every driver and then administer the funds, as I would understand it, to the contractors.

Sections 2 and 3 approved.

On section 4.

J. MacPhail: Section 4 — yikes. It's a biggie in terms of a lot of "(iii)'s" there and a lot of references to other clauses. Could we perhaps just have a clarification of what this section is? I came to the conclusion that it was merely to replace references to the former Young Offenders Act with the Youth Justice Act. But is it more nefarious than that?

Hon. R. Coleman: No, it isn't any more nefarious than that. The housekeeping amendment updates these

sections with reference to the new Youth Justice Act to reflect the date the act came into force. That's why.

Sections 4 to 6 inclusive approved.

On section 7.

J. MacPhail: Section 7 repeals 89 of the Motor Vehicle Act and substitutes this clause. It's about deemed suspension. Section 89(1) says: "A person's driver's licence and his or her right to apply for or obtain a driver's licence are deemed to be suspended if the person" — and then it lists a series of prohibitions — has pled guilty or "as a condition of an order of judicial interim release under the Criminal Code, may not drive a motor vehicle."

Does 89(1) cover the automatic suspensions that exist in law, or is there more to it than that? I'll ask that question first.

Hon. R. Coleman: The suspensions that are in place by the province under law — those are fine. This deems a driver's licence or the driver's right to apply for a licence to be suspended when bail conditions or a pre-sentencing order precludes the operation of a motor vehicle. It authorizes the court to notify ICBC when these conditions are in effect so that the driving records can be updated. The amendment will close a loophole that allows a driver who is subject to bail conditions banning driving to hold a valid driver's licence.

As it currently is, ICBC is not notified of such conditions and has no authority to refuse licensing services to drivers under these circumstances. If we get somebody that's charged with criminal negligence causing death in the operation of a motor vehicle, for instance, in the past one of their bail conditions could be that they couldn't drive. There was a loophole that actually made it so that we couldn't suspend the driver's licence provincially and take the driver's licence away. There was no notification, and there was a loophole that didn't connect the dots. That's what this is doing.

G. Hogg: I seek leave to make an introduction.

Leave granted.

Introductions by Members

G. Hogg: We are honoured today to be joined by 27 students, their parents and teacher Mrs. Reynolds from South Meridian Elementary School. Their principal, Mr. Carlaw, assures me that they are the best school in all of Surrey. Would the House please make them welcome.

[1500]

Debate Continued

J. MacPhail: Mr. Chair, my question is about 89(1). But I'm wondering whether the minister slipped over an answer to a question around 89(2), which is about notification. If he did or didn't, it doesn't matter; I'm

going to ask my question again. I just need clarification.

So 89(2) says this.... Again, we're talking about the clause that talks about deemed suspension. It says: "A judge, registrar, deputy registrar or court clerk may notify the Insurance Corporation of British Columbia if a person (a) is prohibited from driving a motor vehicle under the Youth Justice Act...(b) pleads guilty to an offence under an Act referred to in subsection (1)...or (c) as a condition of an order of judicial interim release under the Criminal Code, may not drive a motor vehicle."

Why is this permissive? Based on what the minister just said, shouldn't it be mandatory that a judge, registrar, deputy registrar or clerk has to notify ICBC?

Hon. R. Coleman: The section does two things. It requires notification and allows a suspension refusal. The word "may" — the permissive word in the legislation, as I am advised — is permissive to allow the courts to share the information to meet the freedom-of-information concerns. We've already worked out the information exchange with the courts and ICBC for this arrangement to take place.

J. MacPhail: Mr. Chair, I assume from the minister's answer, which was a full answer, that this information-sharing is going to take place.

Hon. R. Coleman: That's correct.

Sections 7 and 8 approved.

On section 9.

J. MacPhail: This was a little bit confusing to me. This amends section 92, and I compared the former section 92 with the new one. Is there a typo here?

Anyway, let me just go through this. This section appears to strengthen somewhat the superintendent's ability to prohibit a person from driving and to cancel a licence if they don't complete required programs. But it doesn't make it automatic. Why is that? Why not?

[1505]

Hon. R. Coleman: I'll go through it this way. Just so we understand, if people are suspended for a criminal offence for impaired driving, this section doesn't apply to them. They're suspended — period. They're going through their rehab. This is back to where the circumstances could be different with regards to somebody that has an administrative suspension. It could have something to do with a health issue. It could have something to do with their ability to get to the program or what have you. So this allows the superintendent to prohibit a driver or cancel a licence for failure to complete the remedial, ignition lock or driver programs referred to in sections 25.1(2) and 233.

A housekeeping change has also been made to the section to correct a grammatical error. That's my note. I think that's no big deal. Basically, this is back to the discretion of the superintendent with regards to....

Let's say somebody has two 24-hour suspensions and they have four or five tickets for speeding, maybe one for undue care and attention. The superintendent is suspending the driver's licence and, in addition to that, says: "You're going to go for some remedial things." So when they come back off their suspension and they haven't done that, the superintendent could say: "No. Sorry, not until you complete this are you getting your driver's licence back." It gives the discretion to make sure people are going through the programs.

J. MacPhail: Okay. I might just send over what I see is another typo in here. I'll just send it over. I won't ask questions on it, because I may not have the updated current act on this section.

This section will apply to people other than drunk drivers. I gather that's what the minister is saying, in terms of whether it's automatic or not.

Hon. R. Coleman: It doesn't apply to drivers who have been convicted of a Criminal Code offence, because that suspension is already there. This applies to somebody that may have multiple driving offences, 24-hour suspensions — those type of things that the superintendent deals with an administrative suspension on. It allows him to have the discretion to put them into a remedial program, ignition interlock or the driver training.

The reason for that discretion is because each of these cases is somewhat different. We wouldn't send somebody to an alcohol remedial program if their problem was that they couldn't figure out how to stop at stop signs and properly operate with speed at intersections. We'd want to send them back for driver training. That's why he has that ability. But at the same time, he needs the ability to prohibit or cancel a driver's licence for those people that don't complete it.

J. MacPhail: So this section refers to programs outlined in section 233 of the Motor Vehicle Act, and it doesn't refer to programs and courses set out in section 2 of this act. Is it because it's not dealing with impaired drivers? Is that why?

[1510]

Hon. R. Coleman: No, that's not correct. This deals with both. In subsection (b.1) it deals with the people under section 2 of the act and those programs. Also, under subsection (b.2) it deals with other programs that we may want to put them into.

J. MacPhail: Okay. Just as a point of information, I find this particular section very confusing about who's on first, etc., so that's just gratuitous advice.

Now, it refers to section 233 of the Motor Vehicle Act, but further on in this bill, section 20 repeals the existing section 233. Where is the new section 233? Is it in section 20?

Interjection.

The Chair: Leader of the Opposition, the answer is yes.

J. MacPhail: Yes. Thank you very much.

Section 9 approved.

On section 10.

J. MacPhail: Section 10 is what the minister and I were talking about before, about penalties and fines. It's a section that increases the fines for first-time offenders and repeat offenders. It is less than other jurisdictions, I might add. It also eliminates the mandatory combined penalty of a fine plus a minimum period of jail time for a person who is caught driving drunk while under a prohibition. The change is there.

I'm happy to see that there's an increase in fines. I certainly hope that the minister will monitor that very carefully to see whether the increase is enough, and if it isn't, to increase it more. Why did the minister eliminate the mandatory — and it was mandatory — combined penalties of fines plus a minimum period of imprisonment?

Hon. R. Coleman: Thank you to the member for pointing this out, because I think this is an important thing. On a first offence the courts can still sentence jail. On the second offence it's mandatory. This is done for this reason. The mandatory seven days in jail for a first offence of driving while prohibited is being pulled out of the first offence and leaves jail to the discretion of the court and increases the minimum fine from \$300 to \$500. The reason for that is that only about a third of people that are charged with prohibited driving get convicted. Legal counsel attributes this conviction rate for driving while prohibited to the requirement that the courts impose a mandatory jail sentence on a first offence. The amendment should improve the conviction rates.

Minimum fines are being increased, and the vehicle impoundment period is being extended to maintain a serious consequence for the offence. Given the circumstances at the time of driving while suspended, the courts can still give the jail time on top of that. Now, the member said one thing. She said driving suspended while intoxicated — or she said impaired, I think, or drunk.... That's not the case. This is whether you're sober or whatever.

Driving while prohibited is what this deals with. We don't tie the driving while prohibited to the blood alcohol, so if somebody was impaired, they would be charged with impaired driving and driving while prohibited in the same circumstances, but if they're just driving because they decide they're going to ignore the law, then this gets us there.

Both legal counsel and law enforcement have told us that they feel this would increase the conviction rate, increase their ability to enforce and in actual fact reduce the number of people who think they should drive while prohibited.

J. MacPhail: I guess I understand why the minister has decided to lump drunk driving in with everything

else in terms of prohibited driving, but it can't deter us from taking a strong stance against impaired driving. What's happened here is that this section has weakened what was there before. You know, a fine increase from \$300 to \$500 isn't a big deterrent, but jail time is.

[1515]

What we're talking about here is someone who has offended before, who has a prohibition on his or her licence and is caught again. I find it too much of a give-away by those who are in charge to somehow let this decriminalization happen in this area. I think the double whammy is good. It's not about first offenders in terms of a motor vehicle conviction. These are people who are already under prohibition, and now all they get is.... In the past, if they were caught driving impaired and they had a prohibition on their licence, they had to do jail time and a fine. Now the jail time is gone. I think that's wrong.

Mr. Chair, I have an amendment to section 10 that perhaps you could provide.... If the Table wouldn't mind providing the minister with a copy. I am proposing an amendment to section 10 of this amendment act so that section 95(1)(c) and (d) reads....

I'm sorry, Mr. Chair. My amendment should read 95(1)(c) and (d). My apologies.

By deleting the text highlighted by strikeout and inserting the text highlighted by underline so the amendment reads.... Really, Mr. Chair, this is restoring the double penalty with the increase in the fine as well. It will now read:

[(c) on a first conviction, to a fine of not less than \$500 and not more than \$2 000 ~~or and~~ to imprisonment for not less than 7 days and not more than 6 months, ~~or to both,~~ and (d) on a subsequent conviction, regardless of when the contravention occurred, to a fine of not less than \$500 and not more than \$2 000 ~~or and~~ to imprisonment for not less than 14 days and not more than one year, ~~or to both.~~]

On the amendment.

J. MacPhail: This amendment restores the status quo, which says that if you are caught while under prohibition, you do jail time.

[1520]

Amendment negated on the following division:

YEAS — 2

MacPhail Kwan

NAYS — 33

Falcon	Coell	Brice
Bell	Santori	Barisoff
van Dongen	Bray	Lee
Plant	de Jong	Abbott
Coleman	Penner	Cobb
Jarvis	Orr	Hogg

Nebbeling	Long	Trumper
Johnston	Krueger	J. Reid
Hayer	Stephens	Bhullar
Halsey-Brandt	K. Stewart	Suffredine
Hawes	Kerr	Nettleton

Section 10 approved.

On section 11.

[1525]

J. MacPhail: This section increases the minimum fines for a person caught for the first time driving while prohibited or whose licence is suspended, and increases the minimum fines for a person convicted again. There's a reference to the former provision of the act and the listed provisions. My question is: what is the former provision of the act? What are the listed provisions referred to in this section?

Hon. R. Coleman: In the basically background noise taking place as people left the chamber after the vote, I'm not so sure I got the whole question.

What section 11 does is increase the minimum fine for convictions of driving while prohibited by court order or operation of law. These fines are consistent with the fines being increased in this bill for other driving-while-prohibited offences. If that doesn't answer what the preamble was from the member, I apologize. If she wants to rephrase it, then we'll deal with it.

J. MacPhail: In the section notes, explanatory notes, it makes reference to "former provision of the act," and it also refers to "under the listed provisions." I was just asking for an explanation of what the former provision is to which that refers and what the listed provision is. What is the list?

Hon. R. Coleman: My understanding is that that refers to the provisions that are listed under section 102 of the act, which is basically under sections 98, 99 and 100 — court provisions under the Youth Justice Act, and that sort of thing. It's just to tie the prohibited-by-court-order operation of the law back to the act, as I understand it.

J. MacPhail: Now, it appears to me that section 11 appears to maintain the mandatory combined penalty of both fines plus a minimum period of imprisonment. Am I correct? If so, why in section 11 and not section 10?

Hon. R. Coleman: I am advised by the superintendent and my staff that that is a drafting error, and they are going to get a provision drafted to fix that. I think the best would be to stand down section 11 and continue, if you don't mind.

[1530]

J. MacPhail: Well, it's with mixed feelings that I stand it down, having pointed out the inconsistency.

The minister is now going to go to the lowest common denominator. It would be the opportunity to change section 10. If he'd accepted my amendment, Mr. Chair, there would be no inconsistency. So it is with mixed feelings that I do that.

[H. Long in the chair.]

Hon. R. Coleman: I understand the mixed feelings of the member. I do want to point out, though, that if you have a piece of law that nobody's using and the courts won't use it because they see it as something that's not useful to them and you can't get Crown to do a recommendation to proceed.... If you can change it and charge more people, get them off the road, take their cars away for double the amount of time than you could before and make them pay for that.... I get the member's concern about the seven days, but at the same time, if the law isn't working, sometimes you've got to fix it so that it works.

This is what came through our consultation with law enforcement, with Crown and with everybody else with regards to this. I get that. I understand the member's reluctance to stand down the section. We can either wait for the amendment or proceed with section 12 and come back to section 11, whichever she wishes.

The Chair: We'll stand down section 11 and go to section 12.

Section 11 stood down.

Sections 12 and 13 approved.

On section 14.

J. MacPhail: Section 14 increases the period of impoundment. I want to note that there are other jurisdictions in Canada that have longer periods of impoundment. I would ask the minister along, with his colleagues across Canada, whenever they do meet, to monitor what is the most effective deterring period of impoundment.

Hon. R. Coleman: Certainly, we'll do that. If I have a goal with regards to suspended and prohibited drivers, it's to find a solution that says that they don't make the decision to ignore the law and that we're able to lay charges and have punitive-enough penalties. Most jurisdictions are actually lower than us with regards to the impoundment for prohibited driving. The reality is that we thought by doubling, to begin with, on both periods, then we might get the impact we have.... If we can take that and the fact that we're going to take your car away for 60 or 90 days, etc., and tie into an education program, we'll reduce the people that want to take the opportunity to drive while prohibited.

The whole notion, the whole idea here is to actually improve our conviction rate on prohibited and suspended drivers, which frankly.... Boy, it's been a problem for a long time. It was a problem back in the 1970s

when I was, believe it or not, in law enforcement. That's like another lifetime ago. It was a problem there on the interpretation. We had difficulty getting convictions then and getting the penalties enforced, and it has continued to be a problem. I think that what we need to do is to have those administrative penalties so that we can move more quickly to focus people's minds to quit the behaviour. I'm sure as we start to seize vehicles and impound them for 60 days, the word's going to start to get out that we're dead serious about this.

I will undertake to the member.... Whether or not I am the Solicitor General, my expectation would be that whoever would follow me in the future in this job would also undertake the same thing. What I think everybody is responsible for is to monitor all these things to see how we can make them work better and improve.

Section 14 approved.

On section 15.

[1535]

J. MacPhail: Section 15, as I interpret it, provides a new basis for revoking an impoundment. Is that correct? What's the effect of this? It appears on the face of it to weaken the language on impounding.

Hon. R. Coleman: Not weakened, actually strengthened. This allows us to apply the seizure or impoundment of the vehicle to automatic suspensions under Criminal Code offences. This has sort of always been there.

Sometimes what will happen on the roadside is that an officer will take a driver's licence, check it and find, in the computer they have and based on their reasonable and probable grounds, that the driver's licence has been suspended. In actual fact they find out afterwards that data wasn't fully updated, or whatever the case may be.

Basically, it allows the superintendent to review the impoundment, to revoke the impoundment, if satisfied the driver's licence or the right to apply for the driver's licence was not suspended under the sections that would apply. It's needed to add the deemed suspensions to the appeal grounds for review of a vehicle impoundment, as the bill extends the ability of police to impound a vehicle driven by a suspended driver. Basically, it's just a provision to make sure that the superintendent has the ability to waive the impoundment, if he's satisfied that the reasons for the impoundment were incorrect.

Sections 15 and 16 approved.

On section 17.

J. MacPhail: This section sets out more specific regulations regarding programs and courses. It confers discretion for these provisions to the superintendent. Why did the minister opt to go to an administrative

process with the superintendent instead of a criminal process with a judge and court?

Hon. R. Coleman: I think that earlier I sort of commented on the ability to be able to match your programs with what exists in law from time to time and that we felt we were better off with the regulatory-making process. This is what's going to allow us to establish where it needs to be mandatory, where it needs to be discretionary. When we start to talk about 24-hour suspensions and things where people haven't been before the courts, and we're doing it with point systems and what have you.... There is some discretion on behalf of the superintendent, because otherwise it would just lead to a litigious situation.

[1540]

It allows us to be flexible as we adjust this from time to time, depending on what laws may change federally or what other programs we may want to add. Basically, it allows the establishment of the remedial and ignition-interlock programs. We can also delegate the regulation-making authority for the programs to the superintendent. It allows for operational details of these programs to be specified in regulation. Frankly, it gives us the flexibility to make sure that we can adjust them, as we find out what works and what doesn't, to improve them. That's basically the objective.

Section 17 approved.

On section 18.

J. MacPhail: Section 18 allows screening devices to be prescribed by regulation and allows tests with them to be used to give 24-hour driving prohibitions using .05 percent as the benchmark. It also removes the ability for a medical certificate to reverse the prohibition.

Why are the screening device provisions being left to regulation?

Hon. R. Coleman: I am actually quite familiar, from a personal perspective, with why we would want to do this. The reason is pretty straightforward. What it is, really, is that if there's anything that changes, it's technology.

I can remember the first roadside screening devices that were put in the field for law enforcement over 30 years ago now — probably about 25 years. They had to have a calibration on them, and they were calibrated on a daily basis with a standard alcohol solution test to make sure they were accurate. Today we have approved screening devices that are digitized, and different makes. There are different products in this field coming into the market on a regular basis. We just want to be able to prescribe any additional ones that can be there as a tool for the police.

A significant part of this section, however, is the fact that in the past if a person at the roadside wanted to challenge a 24-hour suspension, the roadside tester could not be used as a default to say, "Yes, you are," by giving him a test on a roadside tester. You had to take him back to the detachment or the police station to do a

full breathalyser on him. This actually streamlines that portion of the process at the roadside and basically makes it work better, so that's why.

J. MacPhail: This new .05 percent benchmark — is that new, or is it in the existing act?

Hon. R. Coleman: The .05 is the same as it was before. This is just so that we can add new screening devices.

J. MacPhail: I'm sorry. Where is it in the legislation? Perhaps the minister could show me where it is in the old legislation.

Hon. R. Coleman: It's in part 4 of the act, section 215(6).

[1545]

J. MacPhail: Mothers Against Drunk Driving asked the government to bring in provisions to ensure that anyone who blew .05 percent or over would receive a 30-day administrative licence suspension. The Solicitor General opted for this weaker sanction of a 24-hour driving prohibition. I think this would be the perfect time to listen to that request.

I have an amendment, Mr. Chair. I'm wondering whether you would mind sharing it with the Solicitor General. There's an extra copy.

[(2) A peace officer may, at any time or place on a highway or industrial road if the peace officer has reasonable and probable grounds to believe that a driver's ability to drive a motor vehicle is affected by alcohol,

(a) request the driver to drive the motor vehicle, under the direction of the peace officer, to the nearest place off the travelled portion of the highway or industrial road,

(b) serve the driver with a notice of driving prohibition, that imposes a 30-day licence suspension, and

(c) if the driver is in possession of a driver's licence, request the driver to surrender that licence]

On the amendment.

J. MacPhail: What I'm suggesting by my amendment is that we actually seize this opportunity — that instead of just allowing for a 24-hour roadside suspension that we amend this legislation so that section 215(2) of the Motor Vehicle Act read now as follows:

"A peace officer may, at any time or place on a highway or industrial road if the peace officer has reasonable and probable grounds to believe that a driver's ability to drive a motor vehicle is affected by alcohol, (a) request the driver to drive the motor vehicle, under the direction of the peace officer, to the nearest place off the travelled portion of the highway or industrial road, (b) serve the driver with a notice of driving prohibition that imposes a 30-day licence suspension, and (c) if the driver is in possession of a driver's licence, request the driver to surrender that licence."

It's an opportunity that we should seize now, Mr. Chair, to say that if you're caught at .05, you're going to have a 30-day licence suspension.

Amendment negated on division.

Section 18 approved.

On section 19.

J. MacPhail: Just a couple of questions on this. Will there be any assistance available to a person who has been served who might have difficulty with a wholly written process?

Hon. R. Coleman: In our intake service now we do assist people with the written process if they have difficulty with it. When there may be a language difficulty, we also allow for translators or somebody to come and translate with the individual. The superintendent's office tries to make sure people that are all treated fairly and that if they have difficulty with the input or the information, they attempt to solve that problem for them.

Section 19 approved.

On section 20.

J. MacPhail: Section 20 repeals section 233 of the Motor Vehicle Act and replaces it with a more specific section. This more specific section includes courses, programs and the ignition-interlock program. This was the section to which the minister referred me that would apply specifically to drunk drivers. Again, it's discretionary. If it's in the public interest, the superintendent may demand these programs.

We've been through this, Mr. Chair, several times, and I can't emphasize enough how I would have wished this government to put the requirement for these programs as a mandatory provision in the legislation. It does seem to me that the government will not only be talking the talk but walking the walk — that there will be a piece of legislation that's very clear on what happens to you if you drive drunk, and there will be no discretion.

[1550]

It is on the basis of that, Mr. Chair.... My previous amendment around this area failed because the government defeated it, but I have an amendment to section 20(2), I think it is — right? It's an amendment to section 20, anyway, amending 233(1) and (2).

[233 (1) In this section, "program" means a remedial program or component of it or an ignition interlock program specified by the superintendent.

(2) The superintendent must notify the Insurance Corporation of British Columbia of a person's right

(a) to have his or her suspended driver's licence reinstated or to apply for a new driver's licence, as the case may be, in the following circumstances:

(i) the person's driver's licence is suspended and the person's right to apply for or obtain a driver's licence is suspended under section 232 (2) and

(3) (a) or (b);

(ii) the person has,

(A) to the satisfaction of the superintendent, attended or participated in and completed a program ~~as required by the superintendent,~~ and

(B) paid the prescribed fees, or]

On the amendment.

J. MacPhail: This is making it mandatory.... It's just another opportunity for the government to see its way to make these rehabilitation programs mandatory.

Amendment negated on division.

J. MacPhail: Section 233(3) states that if it's in the superintendent's opinion that a person should participate in an ignition-interlock program and the person pays the prescribed fees for the ignition interlock, then that can be the person's punishment. What happens if the person can't pay the fees?

Hon. R. Coleman: If they can't pay the fee and they can't pay the program, they don't get their licence back.

J. MacPhail: In a survey of other jurisdictions with mandatory rehab programs that do not impose a complete user-pay system, what do they do in circumstances where people can't pay the fees?

Hon. R. Coleman: My understanding is that in other jurisdictions where a fee exists, they don't compensate the fee. So if the person can't pay it, they don't get their driver's licence back.

Section 20 approved.

On section 21.

J. MacPhail: Now, section 21 amends section 234 of the original act to increase the minimum fine and eliminate the minimum period of imprisonment for a person caught driving while suspended for the first time and increases the fine for a repeat offender. This section again decriminalizes driving while suspended if it's your first time and you get caught.

[1555]

The minister has said in previous discussions earlier today that it's because these sections don't work, apparently, in the court system. I certainly understand the frustration of the legal system being used as a sword instead of a shield around circumstances that harm society and that the aggressive nature of lawyers and the inability of courts to stop aggressive lawyers in terms of allowing people who have been impaired off the hook is a problem. But it seems to me that it's a step backwards to say: "Okay, you win. You win, all of you lawyers" — and the court's acquiescence with those lawyers — "You win. We're going to go to an administrative procedure that no longer requires jail time." I'm greatly saddened by this.

I have an amendment again so that we can revisit this. There's an amendment to section 21 that I am moving: to amend section 234 of the Motor Vehicle Act by deleting the text highlighted by ~~strikeout~~ and inserting the text highlighted by underline so that the amendment reads:

(a) on a first conviction, to a fine of not less than \$500 and not more than \$2 000 ~~or~~ and to imprisonment for not more than 6 months, ~~or to both,~~ and

The committee met at 4:18 p.m.

Sections 1 to 4 inclusive approved.

On section 5.

J. MacPhail: I'd just like to congratulate the chamber for that productive time while the minister was absent. I appreciate us working together to end the twinning of the Port Mann.... I'm just kidding. We're all in favour of that.

Interjections.

J. MacPhail: Absolutely. That's our position.

In section 5, subsection (1) establishes the northern development initiative trust. Subsection (1) states that the trust is a corporation; subsection (3) states that the trust is not an agent of government. But nowhere in the bill does it amend the Freedom of Information and Protection of Privacy Act to include the Northern Development Initiative Trust Act under the Freedom of Information and Protection of Privacy Act. Does the minister plan on doing that?

[1620]

Hon. K. Falcon: No, we won't be doing that, but what you will notice in later sections of this bill is that built into the provisions for accountability are requirements that there be an annual report issued by the trust and that there also be audited financial statements that must be made widely available, including by electronic means. We think that deals very suitably with the issues of accountability. Practically speaking too, member, the majority of the members on this trust are going to be elected municipal politicians, and clearly, their public will take interest in what they're up to. That is what the annual report and the audited financial statements will endeavour to provide.

J. MacPhail: That's unacceptable. The government can't claim, then, that this is modelled after the Columbia Basin Trust because, of course, the Columbia Basin Trust is subject to the freedom-of-information and protection-of-privacy legislation. Clearly, once again, it's \$135 million of taxpayer money that's not subject to any light being shone on it.

The government is completely breaking its promise of being open and accountable, so I'm going to move an amendment, Mr. Chair. I think I've tabled it with the Table. There is an amendment to section 5. If the government defeats this, stop referring to this as being the same as the Columbia Basin Trust. It won't be anything like the Columbia Basin Trust if the government defeats this amendment.

[SECTION 5.1, by adding the following section:
Freedom of Information and Protection of Privacy
5.1 Schedule 2 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by adding the following:
Public Body: Northern Development Initiative Trust
Head: Chair:]

Amendment negated on the following division:
[1625]

YEAS — 3

MacPhail	Kwan	Nettleton
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NAYS — 24

Falcon	Coell	Brice
Santori	Barisoff	Bray
Lee	Plant	Abbott
Coleman	Penner	Cobb
Jarvis	Hogg	Nuraney
Nebbeling	Johnston	Hayer
Stephens	Bhullar	Wong
Halsey-Brandt	Suffredine	Kerr

Section 5 approved.

On section 6.

J. MacPhail: Section 6 describes directors of the trust. Under section 6(2)(b) it states that five of the directors are to be appointed by the Lieutenant-Governor-in-Council. Can the minister outline the criteria the government will use to appoint these directors?

Hon. K. Falcon: We anticipate that the criteria that we will be using to appoint those directors will be criteria that will buttress the strengths that local government leaders bring to the trust. That will include some business experience, some knowledge of the area. Obviously, our preference is those people will come from those regions. Also, we intend to ensure that at least one of those appointments is from a first nation so that we ensure that first nations also have an opportunity to have a lens into this process.

J. MacPhail: Subsection (6) of section 6 restricts appointments of MLAs. Are there any other restrictions?

Hon. K. Falcon: No. It's only MLAs that are restricted. They're not restricted, as you know, from the regional advisory committees where we felt it was important that there be a provincial link with the regional advisory committees as they consider projects that may be of value. But we felt it was very important not to have MLA representation on the northern development initiative trust board itself.

Section 6 approved.

On section 7.

J. MacPhail: As soon as this act comes into force, this section appoints five individuals by Lieutenant-

Governor-in-Council — by cabinet. Those directors are going to be installed as soon as the act comes into force. Does the minister have information for the House about who these individuals will be?

Hon. K. Falcon: Very honestly, no, I don't at this point. Those appointments will be made through OIC, but we intend to solicit input from folks, including members of this House, particularly — actually, almost exclusively — from the north, to submit names that we can consider for those positions.

Sections 7 to 13 inclusive approved.

On section 14.

[1630]

J. MacPhail: This section is entitled "Government may issue directions." Subsection (1) states that "the Lieutenant Governor in Council" — cabinet — "may...issue directions to the company, directing the company to pay to the government any or all...proceeds."

What's the purpose of this section?

Hon. K. Falcon: That is to direct B.C. Rail to forward the proceeds of the CN-B.C. Rail investment partnership to the government. That's what it is referring to.

J. MacPhail: Is there any other intent under that section? For instance, does this section permit the government to take any proceeds made to the trust by the trust?

Hon. K. Falcon: No, it does not.

J. MacPhail: Subsection (2) goes on to say that "despite section 25 of the British Columbia Railway Act and any other enactment, the company must pay to the government, out of the proceeds, the money it is directed to pay under subsection (1)."

Here's what section 25 said, under the British Columbia Railway Act: "The money raised by the company by borrowings or on its capital stock must be applied to the making, equipping and maintaining of the railway and other purposes of this Act."

I don't understand why that section is listed as an exemption. This bill says "despite" that section.

Hon. K. Falcon: The reason we need to do that is because otherwise B.C. Rail would have to use the money for the purposes outlined there, which are stated to be "making, equipping and maintaining the railway and other purposes of this Act." What this does is ensure that there is an allowance made in recognition of section 25 that the proceeds can be directed by government to government.

Sections 14 to 17 inclusive approved.

On section 18.

J. MacPhail: Under this section the regional development accounts are given nine areas in which investment can be made. They are all economic in nature. Is there a reason why cultural, health or education sectors were excluded from this?

Hon. K. Falcon: Actually, I think that's an excellent question, and there is.

The reason is primarily that we wanted to ensure that this wasn't an attempt to provide dollars for northern communities that could be used to essentially off-load provincial government responsibilities. The province, as the member well knows, has made substantial multi-hundred-million-dollar increases in both health and education budgets, and while there are still challenges out there, we wanted to ensure that the purpose of this fund was not to be used to take on responsibilities that are indeed provincial responsibilities.

What we tried to do on the purpose of the accounts was provide the kind of scan that we've heard from those folks in the north who have actually come to us with suggestions in areas that they need help on. I can tell the member, for her edification, that in the meetings the Premier and I had with all of the mayors and regional district representatives that would form the regional advisory committees in the four different regions, they were very satisfied with the scope of the legacy investment criteria.

Sections 18 to 20 inclusive approved.

On section 21.

J. MacPhail: This deals with the Balanced Budget and Ministerial Accountability Act. It seems to me that this section allows several ministers to get out of the requirements of the Ministerial Accountability Act on the basis that they won't be deemed to have gone over their budget as a result of distributing the grants.

[1635]

Why the intent there? If this is out of the billion-dollar sale, why is there any exemption whatsoever for ministerial accountability? The Minister of Finance has said over and over again that this is revenue-neutral, that it doesn't have anything to do with any other aspect of government.

Hon. K. Falcon: The reason is that we are talking about one-time funds here. It's an extraordinary situation that is neutral to the bottom line of the accounts. It is similar in some ways to when we receive federal health dollars well into a fiscal year. As I say, these will be neutral to the bottom line. That is why it has been provided in the past and is being provided here for the exemption under the Balanced Budget and Ministerial Accountability Act.

Sections 21 and 22 approved.

On section 23.

J. MacPhail: Section 23 is entitled "Power to make regulations." Subsection (2) of that section allows the gov-

ernment to amend the definition of the Cariboo-Chilcotin-Lillooet region. What's the purpose of this section?

Hon. K. Falcon: We wanted to make sure that when we established the four regions in the north that would be eligible to participate in the northern development initiative trust fund.... We wanted to ensure that it wasn't so inflexible in legislation that if the regional advisory committees came to us and had a suggestion of a change that needed to be made that more suited their purposes, we wouldn't have the ability by regulation to make that change. That's the reasoning.

Sections 23 and 24 approved.

[1640]

Title approved on the following division:

YEAS — 27

Falcon	Coell	Brice
Santori	Barisoff	Bray
Lee	Plant	de Jong
Abbott	Coleman	Penner
Cobb	Jarvis	Hogg
Nuraney	Nebbeling	MacPhail
Kwan	Johnston	Hayer
Stephens	Bhullar	Wong
Halsey-Brandt	Suffredine	Kerr

NAYS — 1

Nettleton

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

Motion approved.

The committee rose at 4:43 p.m.

The House resumed; J. Weisbeck in the chair.

Report and Third Reading of Bills

Bill 59, Northern Development Initiative Trust Act, reported complete without amendment, read a third time and passed.

Hon. G. Plant: I call committee stage debate, Bill 58.
[1645]

Committee of the Whole House

B.C. RAIL BENEFITS (FIRST NATIONS) TRUST ACT

The House in Committee of the Whole (Section B) on Bill 58; H. Long in the chair.

The committee met at 4:46 p.m.

On section 1.

J. MacPhail: In section 1, under the definition of "allocation," we see that the government is putting \$15 million into the first nations trust. The government sale was worth \$1 billion. What was the decision process used to determine the \$15 million figure going into the first nations trust?

Hon. K. Falcon: It's consistent with the \$15 million for each of the four regions that will be provided for. I think it's important also to say to the member that, in addition to this acting as a tool to help build capacity, economic development opportunities, educational opportunities and cultural enhancement opportunities, the first nations will also be able to fully benefit in all the benefits of the northern development initiative trust funds. As members of the north, they will of course have ideas that will be generally favourable for all northerners, not just first nations.

J. MacPhail: Under the definition of "eligible first nations and treaty societies," there are 24 first nations listed. Are all 24 guaranteed access to the benefits set up in this trust without qualification?

Hon. K. Falcon: Yes, they are. I would just add one thing: there are 24 first nations and one treaty society, the Gitksan. But yes, they are all eligible.

J. MacPhail: My question was "eligible without qualification." So when the act is passed, all 24 of them are eligible?

Hon. K. Falcon: That's correct.

J. MacPhail: There's no qualification that they have to sign on to something in order to be eligible?

Hon. K. Falcon: Yes, they would have to agree that they wish to be a beneficiary first nation. In other words, they would have to agree that they actually want to be part of it. But that is it.

J. MacPhail: What does the document say they have to sign on to? I just want to review some history here, and perhaps we can clear it up right now. Some of the first nations — in fact, I think many of them — expressed concern that signing on means endorsing the government's broken promise that they wouldn't sell B.C. Rail. Seton Lake Chief Garry John actually said it's nothing more than hush money. He also said it amounts to asking for a blind trust. What is it that they have to sign on to?

Hon. K. Falcon: I appreciate the opportunity to provide clarification. There's no document per se. What would be required would be a band council resolution simply stating that they wish to participate as a beneficiary first nation.

J. MacPhail: Have these first nations been made aware of that and what form the resolution will take?

Hon. K. Falcon: Yes, they have.

[1650]

J. MacPhail: What information has the minister received to date about how many amongst the 24 propose to pass such a resolution?

Hon. K. Falcon: At this point, we have indications that over half of the first nations wish to participate. The balance have indicated they wish to have time to actually review this piece of legislation that we are currently debating, to ensure that it meets what we said it would meet in terms of their requirements. Some also indicated they wanted to make sure they had time to review the full details of the partnership and transaction agreements.

J. MacPhail: Is the minister able to tell us which first nations bands will sign on at this stage? Can you go through the list, please?

Hon. K. Falcon: You'd make me read those names?

J. MacPhail: Well, no. And I appreciate it.... I'm sorry to say that I am amongst those who have trouble pronouncing the bands. So no, I am happy to have the minister refer to the letter indication under the definition of eligible first nations and treaty societies. The letters he reads out will be the bands that have indicated they're signing on.

Hon. K. Falcon: I do appreciate the member's forbearance in allowing me not to have to pronounce all the names, because I would humiliate myself here on television.

First is the Gitksan Treaty Society, which isn't one of the lettered initials, so I will mention that name. Then, moving down the list using the ABCs as we talked about, the first is (c), then (d), then (g), (h), (i), (j), (m)....

J. MacPhail: M?

Hon. K. Falcon: Yeah, "m" as in mother. Then (o), (p), (r), (v), (w), and that's it.

J. MacPhail: Has that level of support changed since November of last year?

Hon. K. Falcon: Yes, that number has come down fairly dramatically from — I forget the month, actually — whatever month we were having those discussions, when I think the number was closer to the 20 figure. Primarily they were concerned whether it would abrogate or derogate in any way from treaty responsibilities of the province. That is why we have included clause 11, which is titled "No rights affected."

[1655]

That was really the major issue for first nations. Many of these first nations, if I wish to hazard a guess

for the member.... I believe that once they have the opportunity to see this legislation, confirm with their own eyes that they can see section 11 is there, many of these first nations will come aboard fairly readily.

J. MacPhail: Well, I have no idea whether the minister's optimism is justified or not. There is just as much pessimism being expressed by some first nations. Part of that pessimism is based on what they have determined to be the lack of consultation on this whole process of selling B.C. Rail. I gave the minister some questions yesterday around the questions I would be asking about consultation.

Mr. Chair, there is a legal requirement for governments to consult with first nations when their constitutional rights may be affected. Let me just ask the minister for specifics on that. I'm going to go through the list of questions on the specifics of the consultation.

In April 2003 the Premier and the former minister, now the member for Nanaimo-Parksville, provided a letter to all first nations along B.C. Rail's right-of-way to advise them of the government's decision to seek an operating partner. The letter advised chiefs that the government representatives would be in contact and inform them of the province's action. Then the province went out and implemented this grand advise-and-inform strategy, and to date, when I asked the minister about what consultation he had done, in estimates in the spring of this year, 2004, he gave the same scenario of advising and informing. What consultation has been done where there is actually more than just advising and informing?

Hon. K. Falcon: No, these meetings were to inform and advise. As I think I have said to the member but certainly publicly prior to this, there was no obligation on the government to consult. As we've said before many times, one of the real advantages of the CN-B.C. Rail partnership is that the government maintains public ownership in perpetuity to all the lands, rail, railbeds and rights-of-way. That has not changed. The only thing that has changed is we have brought in an operating partner to operate the assets.

J. MacPhail: I disagree entirely with the minister's interpretation that there is no obligation to consult. Now, I'm quoting an anonymous source here, so the minister has every opportunity to deny this. As I said earlier in second reading, it was reported in the newspaper in a pundit's column — there is no question about that — that he was quoting from a comment made to him by a staffer within the Ministry of Attorney General last December 2003. He said.... Well, I should say the person said — I have no idea whether it's a man or woman — "A trust developed wholly by the province or with limited involvement by first nations could result in the withdrawal of any support for the partnership agreement and could also potentially affect broader government relationships with first nations communities." Does the minister agree with that?

[1700]

Hon. K. Falcon: The confidential briefing note that the member refers to was actually posted on the B.C. government website when that matter was discussed at an open cabinet meeting in December 2003.

I think the issue in my mind is that we have actually had a number of discussions with the first nations. I would agree with the member that some of them disagree with our interpretation of the transaction. That's certainly their right — to disagree with us on that. As I say, we've been very clear that this is a partnership arrangement and that there has been no change in ownership of the railbed, the land, track or rights-of-way. That will be held in perpetuity by the Crown through the government-owned B.C. Rail company.

J. MacPhail: Let's put that to the test, then. In the process.... Well, beyond what happened in 2003, has there been any or even more advising and informing of the first nations affected? If so, when?

Hon. K. Falcon: There has been. The meetings that were held in 2004 include a Prince George meeting on February 12, 2004, in which 19 first nation representatives appeared; on March 4, 2004, also in Prince George, where 20 first nation representatives appeared; on March 9, 2004....

Interjections.

The Chair: Would the members please keep the talk down a little bit, please. Thank you.

Hon. K. Falcon: Thank you, Chair.
Do you want me to go back again?

Interjection.

Hon. K. Falcon: Okay. Sorry.

The meetings in 2004. February 12, 2004, in Prince George, B.C. — 19 representatives of first nations attended that particular session. On March 4, 2004, again in Prince George, 20 representatives from the first nations attended. On March 9, 2004, in North Vancouver, six representatives of first nations attended. On March 30, 2004, again in North Vancouver, 17 representatives of first nations appeared.

I should emphasize that that doesn't include the meetings that were held by B.C. Rail with first nations. These are actually government meetings that were held. To assist the member if she wishes, I've got an extra copy of this, which includes the first nations and the representatives that attended those meetings, which I'd be glad to share with the member.

J. MacPhail: Yes, I'd appreciate that. I'll take the minister up on his offer to provide that — who attended and the dates. Thank you. What was discussed at the meetings?

[1705]

Hon. K. Falcon: In those discussions.... The advise-and-inform discussions centred on the specifics of this

piece of legislation that we're currently talking about. We provided a confidential copy of the legislation for their working groups. I think the member will agree that this is a fairly extraordinary level of disclosure. We answered inquiries and questions that were raised. Actually, as a result of these sessions, we added section 11 in response to their concerns that participating in the trust could be considered to be consultation and/or accommodation. That is why section 11 was specifically added.

Since some had concerns that they would not have enough time to really study and think about the bill, we specifically structured the bill so that they would have time to do that, to take time to study the bill. That's why we list the eligible first nations with.... Once a band passes a resolution that we discussed earlier, they would then become a participating first nation. That was structured specifically that way as a result of the discussions we had with the representatives of the working groups.

J. MacPhail: Is there a process of ongoing meetings now that the legislation is public? What's the process to ensure — as much or not — the right to participate amongst all 24? Are there ongoing meetings and advising and informing?

[1710]

Hon. K. Falcon: No, we're not planning any meetings until the trust is established. However, we will contact them by phone and letter to ensure that they have a timely opportunity to decide and get notice to us if they wish to participate.

Sections 1 and 2 approved.

On section 3.

J. MacPhail: Section 3 is the one that establishes the B.C. Rail first nations benefits trust, and similar to the northern development initiative trust, this trust under Bill 58 is established as a corporation, not an agent of government. Does the government intend to include this new corporation under freedom-of-information laws?

Hon. K. Falcon: No, the answer is very similar to the last one. I believe it's important to underscore that the purpose of this is to actually keep it at arm's length from government, separate from government. Like any organization that is independent from government, they're not captured by the Freedom of Information Act that the member refers to. But again, they will be accountable to the members of their respective first nations. That is something that will be coming up in a following section.

J. MacPhail: Well, I hardly think an organization is compromised by being subject to freedom-of-information laws. And it's a trust. It's a trust governed by legislation, fully funded by taxpayer money.

I am moving an amendment to section 3.1.
 [SECTION 3.1, by adding the following section:
 Freedom of Information and Protection of Privacy
 3.1 Schedule 2 of the Freedom of Information and Protec-
 tion of Privacy Act, R.S.B.C. 1996, c. 165, is amended by
 adding the following:
 Public body: B.C. Rail Benefits (First Nations) Trust
 Head: Chair.]

Amendment negatived on division.

Sections 3 to 10 inclusive approved.

On section 11.

J. MacPhail: The minister says section 11 was added after his meetings with first nations. Let me this ask question.

I'll read section 11 into the record, Mr. Chair. It says:

"No rights affected

"Nothing in, under or arising out of this Act, includ-
 ing, without limitation,

(a) the inclusion of a first nation in, or the exclusion of a first nation from, the B.C. Rail Benefits (First Nations) Trust, or (b) any participation of any first nation, or any failure or refusal of any first nation to participate, in the B.C. Rail Benefits (First Nations) Trust, abrogates or derogates from any aboriginal rights or treaty rights of any first nation or of any aboriginal peoples, including, without limitation, any right of a first nation or of any aboriginal peoples to claim an aboriginal right or treaty right in, to or in relation to any land, thing or matter."

The minister said that was provided after his advis-
 ing and informing meetings with first nations. How
 does the minister explain the existence of that section
 in relation to the revitalization agreement that allows
 government to sell Crown land to CN for \$1?

Here's what the revitalization agreement says. Sec-
 tion 3.8 of the revitalization agreement says that the
 landlord can transfer all of its right, title and interest in
 the leased property to the tenant on an as-is, where-is
 basis for \$1.

[1715]

Hon. K. Falcon: As the member knows — I believe
 we may even have canvassed this during estimates —
 what happens in a situation of discontinuance.... When
 CN, as the operating partner with B.C. Rail, determines
 they wish to discontinue a certain piece of land and
 have no further use for that land, there's a discontinu-
 ance process that's involved.

As the member knows, and I won't go into detail,
 there are lots of opportunities for government — as the
 owner, of course, of the railbed, the lands and the
 right-of-way — to make some decisions. But I do want
 to underscore this. If we were ever to sell land, consul-
 tation obligations may arise, and our government
 would follow its constitutional obligations if we were
 to consider selling land.

Sections 11 to 14 inclusive approved.

[1720]

Title approved on the following division:

YEAS — 25

Falcon	Brice	Santori
Barisoff	Bray	Lee
Plant	de Jong	Abbott
Penner	Cobb	Jarvis
Hogg	MacPhail	Kwan
Johnston	Krueger	Hayer
Stephens	Locke	Bhullar
Wong	Halsey-Brandt	Suffredine
	Kerr	

NAYS — 1

Nettleton

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

Motion approved.

The committee rose at 5:23 p.m.

The House resumed; J. Weisbeck in the chair.

Report and Third Reading of Bills

Bill 58, B.C. Rail Benefits (First Nations) Trust Act,
 reported complete without amendment, read a third
 time and passed.

Hon. G. Plant: I call continued committee stage
 debate of Bill 72.

Committee of the Whole House

TRESPASS AMENDMENT ACT, 2004

(continued)

The House in Committee of the Whole (Section B)
 on Bill 72; H. Long in the chair.

The committee met at 5:25 p.m.

On section 7.

J. Kwan: Section 7 of the act deals with compensa-
 tion issues, meaning that the court may order compen-
 sation. What offences would be subject to court-
 ordered compensation?

Hon. G. Plant: According to the language of the sec-
 tion, the compensation or restitution order is available in
 cases where someone has been convicted of an offence
 under section 4 or section 5(7) of the Trespass Act.

J. Kwan: I would be interested in getting the minis-
 ter to actually put on record the list of the offences that

would be subject to this section of the act in terms of compensation. Is it, for example, trespass alone, or is it also if you fail to provide a name, which is actually under section 5? If you fail to give the person who is requesting a name and address, you are deemed to be committing an offence. Would that section apply as well? And what other areas might this cover in terms of actual offences?

Hon. G. Plant: I just did exactly what the member asked me to do. I have itemized the offences. They are the offences in section 4 of the Trespass Act, and that would be the new section 4 that will be enacted as a result of passing section 2 of this bill. It is the offence in section 5(7), which is not affected by this bill. I believe it is the offence where a person other than an occupier or an authorized person must not remove, alter or deface signs posted for the purpose of giving notice.

Just to maybe complete the thought. I think that the member, in her question, referred to what will become the new section 8, which is the demand to give a name and address. An offence under that section would not trigger the compensation possibility under the new section 11.

J. Kwan: I appreciate that. I inadvertently left the original Trespass Act on my desk. I don't have section 7 with me, which is why I was trying to get the Attorney General to put this on the record. Then I wasn't sure whether or not section 8, which amends sections 7 to 9 of the original act, would apply. I was trying to get clarity on that.

In terms of restitution, I can certainly appreciate, under section 7, which is the original act, where we're talking about defacing of signage and so on, where that compensation issue might come in. But on the other section, where it deals with section 4, are we talking about compensation for damages to private property or are we talking of court costs? What exactly are we talking about?

Hon. G. Plant: An order here requires proof of actual damage or loss, and it would be actual damage or loss to the property or to something else. What's required is that there be damage or loss sustained by the occupier or another person as a result of the commission of the offence.

[1730]

J. Kwan: Of course, some of the issues that may arise from this act.... It may be that the person who's charged and convicted of the offence is made to pay compensation or restitution, but the person may not be able to pay.

In the case where the individual is not able to pay the court-ordered compensation.... What happens in those instances? Are we talking about jail time, then, for the individual?

Hon. G. Plant: It won't be an offence to fail to pay restitution. The law of tort generally does not inquire

into the financial circumstances of a defendant when there's a determination of the amount of compensation owing for ordinary damages for loss. It's entirely possible in the law of tort that someone who has no means could be sued for negligence, for example, for having caused a motor vehicle accident that gives rise to a claim in negligence. Then the plaintiff has to do whatever they can to try to recover funds from the defendant for the injury, pursuant to the court order.

This would probably be somewhat similar. I think it is theoretically possible that there are circumstances where a failure to pay restitution might constitute a contempt. I think those would be pretty rare. It's pretty difficult to get a contempt order from a court for failing to pay an amount owing.

These are the usual consequences, I think, that would flow or arise under the law in respect of this situation, which, to be clear, is a situation where the trespasser has gone onto somebody's property and caused some damage. The victim is probably standing in court. Rather than pursuing a claim against the wrongdoer directly, the court says: "I think it's in the interests of justice in this case to make an order for restitution."

One of the things the section does is say that if the court makes an order for restitution, then the victim of the loss or damage does not have their civil cause of action in trespass. The trespasser could only be made to pay once. There would not be a double recovery.

The idea of restitution in this section is not a fine. This is compensation for an amount of loss that's been caused by an act of trespass. The section presented here contains the same policy intent as the current section 11 of the act.

J. Kwan: Then it's likely the case that if the landowner wants to follow through if a person does not pay the court-ordered restitution or compensation to him or her, the landowner or homeowner would have to start another set of legal proceedings in terms of trying to follow up on that. Or it may be that that's the end of the matter — with the caveat that it may be that in some cases, contempt of court might be found. Assuming, generally speaking, that's not the case, then the natural course of proceedings would be as I outlined. Is that correct?

[1735]

Hon. G. Plant: It may not be quite that way. If the court makes an order for restitution under subsection (1), then the victim's right to recover is extinguished by the operation of subsection (2) even if no payment of money is made. Once the court order is made, then according to subsection (2), no action for damage lies against the defendant for the loss or damage sustained as a result of the commission of the offence.

The only recourse that I can think of that would follow if someone didn't pay restitution as ordered is, perhaps, the possibility of contempt in some cases. I could say that, going back a ways now.... A long time ago I used to do the odd contempt application in fam-

ily cases. If you couldn't satisfy the judge that the defaulting payer had assets, the judge wasn't interested in hearing from you. Contempt only became relevant in circumstances where the defendant was able to pay and was doing something to avoid paying. I expect that the same approach would be taken to restitution orders in this provision.

Sections 7 and 8 approved.

On section 9.

J. Kwan: Sections 9 and 10 make provisions to ensure that land surveyors not caught in the act would have, I guess, some sort of protection. Was this necessary because of the earlier section in the bill, section 4(2), where one is presumed to be guilty, presumed to have committed an offence and not to have the consent of an occupier or an authorized person to be there? Is that why this section of the act is necessary?

Hon. G. Plant: Well, this is more a matter of house-keeping, I think, than anything else. The existing Trespass Act contains a number of sections, starting with section 12, which says that a land surveyor is entitled to go on land. Actually, it goes on to provide a penalty for refusing access to a land surveyor. But there is a provision that says that if a land surveyor causes damage on land, the owner may get the right to have the land surveyor make good all the damage. That's in the existing Trespass Act.

What we are doing is taking those clauses out of the Trespass Act and putting them where they belong, which is in the Land Surveyors Act. That's the effect of section 9 of the bill, and I think also of section 10, which gives effect to a change in the regulatory structure for land surveyors.

Yes, it is relevant. All of this is relevant for the purpose of the defence to trespass which is in section 4.1(b) of the Trespass Act, which is the fact that you cannot be convicted of trespass if what you were doing was with lawful authority.

J. Kwan: I have one more question for the minister. Given that the land surveyors are explicitly identified in this act with a provision such as this for their protection, I imagine there are other groups that may well be caught in a situation similar to that of land surveyors — for example, those people who read meters around level of usage on water. I don't know what you call them. What about people like that? Why are they not part of the act, for example?

[1740]

Hon. G. Plant: Well, they may be protected in their statutes. What we had here was an old Trespass Act that had some provisions dealing with land surveyors in it. We're peeling out those land surveyor provisions and putting them in the Trespass Act.

It's entirely possible that in other statutes or in other regulatory instruments there will be found provi-

sions that expressly give people like, for example, a gas meter reader the power to go on private property for the purpose of reading the meter. This doesn't touch that. That's why I say what's happening here is that this is an amending bill.

The clause that we are now in, section 9, is actually an amendment not to the Trespass Act but to the Land Surveyors Act. There may well be other statutes that contain provisions that would be relevant for the purposes of the lawful authority defence.

J. Kwan: Just a final comment, then, with respect to that general issue. I mean, it is interesting. This is an amendment act that the minister has brought forward, and he said several times throughout the debate that the reason why this act is before us is to modernize the act. It is to update it and so on and so forth.

Yet in that process of updating, it would seem to me that there are huge gaps that the government and the minister have actually neglected. Actually, if we were to really update this act by way of an amendment act, then one would have looked into those other issues to make certain not just that the land surveyors issue falls into the right section but also that other individuals who might need such protection and should be given such protection would have language here addressing those individuals and those professions as well.

Having said that, it is my view that the government was playing politics with this piece of legislation. We've already made those comments early on in debate. I'll leave it at that. I know that the L-G is coming momentarily, so I will just sit down and let the proceedings carry on.

Sections 9 to 11 inclusive approved.

Title approved.

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

Motion approved.

The committee rose at 5:43 p.m.

The House resumed; J. Weisbeck in the chair.

Report and Third Reading of Bills

Bill 72, Trespass Amendment Act, 2004, reported complete without amendment, read a third time and passed.

Deputy Speaker: Hon members, I understand the Lieutenant-Governor is going to be in the House in a number of minutes. If we just want to take a very short recess, I will ring the bells when she has arrived.

The House recessed from 5:44 p.m. to 5:51 p.m.

[J. Weisbeck in the chair.]

Deputy Speaker: Hon. members, if the members would just please take their seats. The Lieutenant-Governor is approaching the chamber.

Royal Assent to Bills

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

Clerk of the House:

Community Living Authority Act
Range Act
B.C. Rail Benefits (First Nations) Trust Act
Northern Development Initiative Trust Act
University Amendment Act, 2004
Attorney General Statutes Amendment Act, 2004
Charitable Purposes Preservation Act
Justice Modernization Statutes Amendment Act, 2004
Forests Statutes Amendment Act (No. 2), 2004
Motor Vehicle Amendment Act, 2004
Expropriation Amendment Act, 2004
Land Title and Survey Authority Act

Finance Statutes Amendment Act, 2004
Property Transfer Tax Amendment Act, 2004
Trespass Amendment Act, 2004
Freedom of Information and Protection of Privacy Amendment Act, 2004
Miscellaneous Statutes Amendment Act (No. 3), 2004
Transportation Statutes Amendment Act, 2004
In Her Majesty's name, Her Honour the Lieutenant-Governor doth assent to these acts.

Her Honour the Lieutenant-Governor retired from the chamber.

[J. Weisbeck in the chair.]

Hon. G. Plant moved adjournment of the House.

Motion approved.

Deputy Speaker: The House stands adjourned until 10 o'clock Monday morning.

The House adjourned at 5:54 p.m.