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SECOND SESSION, 39TH PARLIAMENT

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THURSDAY, MAY 20, 2010

The House met at 10:02 a.m.

[Mr. Speaker in the chair.]

Prayers.

Orders of the Day

Hon. M. de Jong: I call, in Committee A, Committee of Supply — for the information of members, the on-going estimates of the Ministry of Energy — and, in this chamber, committee stage debate on Bill 14.

[1005]

Committee of the Whole House

BILL 14 — MOTOR VEHICLE AMENDMENT ACT, 2010

The House in Committee of the Whole (Section B) on Bill 14; L. Reid in the chair.

The committee met at 10:07 a.m.

On section 1.

Hon. M. de Jong: I draw attention to and call the amendment that stands on the order paper in my name to section 1.

[SECTION 1, by deleting the text shown as struck out and adding the text shown as underlined:

1 Section 25 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, is amended by adding the following subsection subsections:

(10.3) For the purposes of a regulation under subsection (8), (10), (10.1) or (10.11) in respect of the issuance of drivers' licences to persons who are learning to drive a motorcycle or in respect of drivers' licences issued to persons to drive a motorcycle, the Lieutenant Governor in Council may by regulation specify that subsection (10.2) or (11), as the case may be, does not apply.

~~(10.3)~~(10.4) For the purposes of a regulation under subsection (10) (c) that restricts the motorcycles or classes of motorcycles that a class of persons may drive,

(a) the minister may make regulations specifying the motorcycles or classes of motorcycles to which a member of the class of persons is restricted, by way of one or more of the following:

- (i) model;
- (ii) make;
- (iii) year, and

(b) subsection (11) does not apply to the restriction.]

On the amendment.

Hon. M. de Jong: In so doing, I can advise the House that the rationale behind the amendment is to ensure that the provisions dealt with in the section, particularly

with respect to graduated licensing, don't — and I emphasize do not — apply retroactively.

The concern is that, as written, the act would impose new conditions and new processes as written that would capture individuals who are already within the graduated licensing program and, in effect, change the rules midstream for them. The amendment is designed to ensure that those who are within that graduated licensing program now are not captured by the changes. The changes will apply on a go-forward basis.

Amendment approved.

Section 1 as amended approved.

Sections 2 to 4 inclusive approved.

On section 5.

M. Farnworth: Section 5, dealing with motorcycles, deals with the standards that are required for helmets and — I guess, not being a motorcyclist — the way in which one rides a motorcycle. I see references in here to making sure one has both feet on the footplates and riding astride and such like.

To me, the key issue is around, for example, safety helmets and the circumstances that are in place. What I'd like the minister to tell me is: what is different in this section as opposed to the existing legislation, and what changes are there? For example, is this dealing specifically with the different types of helmets, and can he explain to me what those changes are and how they will be different from the current sections that deal with that?

[1010]

Hon. M. de Jong: Thanks to the member. The first thing is that the member's question has related to motorcycle helmets. I just want to be clear that there are some other items captured by the section, but I'll deal with the helmet provisions.

The biggest change in the construct here is as follows. Presently there is actually a regulating authority, but the manner in which it has purported to work or not work, as the case may be, is that it lists actual manufactured types of helmets. It lists the actual make and model. That has proven unworkable. It changes too frequently.

Instead, the shift that is being made is to require riders to wear a helmet — except those that are exempted as per the provision — that has been approved by an international sanctioning body, the Department of Transport being one. There's a European agency, Snell Memorial Foundation. I mentioned the Department of Transportation.

We'll list in a regulation what those sanctioning bodies are, but as long as a helmet has been approved by one

of those agencies, it will be available for use on the highway in B.C. That's the shift that is taking place here.

M. Farnworth: I think that's where I'd like to focus my questions, then, for a few minutes. Then, what the minister is saying is that right now, under the current regime, you're listing the different types of helmets that one can use, but like any manufactured product, that changes on style, on companies going in and out of business.

So we're now moving to a system whereby it's being done by regulation and by standards. The standards are being set by the organizations — for example, Department of Transport, some other international agencies — but not by the province.

I see the minister nodding his head. So the standards that are being set in place for helmets are not being done by the province but by the Department of Transport. What is the rationale, then, for using the Department of Transport and other organizations, as opposed to just using the Department of Transport?

[1015]

Hon. M. de Jong: I can advise the.... I think the member's analysis was correct, as I recall. We've identified three agencies that possess the expertise the province of British Columbia believes necessary to provide accurate sanctioning. I've mentioned the Department of Transport. I should say that's the U.S. Department of Transport. The DOT sticker on the back side of the helmet refers to the U.S. Department of Transport.

There are helmets that come from Europe, and the sanctioning agency there is the Economic Commission for Europe, the ECE — and the other agency that I mentioned, the Snell Memorial Foundation. So those are the three that are contemplated presently. It's hard to go into a store now and find a helmet that is not sanctioned by one of those three agencies.

M. Farnworth: I thank the minister for that explanation. I am surprised that we don't have our own standard here in Canada — that when we're talking about the Department of Transport, we're referring to the U.S. Department of Transport. Knowing Ottawa, if they hear about this, I'm quite sure they will attempt to rectify that.

We're moving away from a system of listing, in essence, to one of these sanctioned organizations, of which there are three: the DOT out of the States; the Snell Memorial, which is out of Europe; and the ECE, which is also out of Europe.

Currently if you want to use a helmet, you can use, for example.... I think the controversy amongst the biking community that's come around is the beanie helmet, or novelty helmet, as they're referred to. I take it they're not sanctioned by any of these. Or is it specifically excluding that particular type of helmet?

Hon. M. de Jong: I'm not an expert, but on balance, I think that is an accurate statement. I'm advised that the defining feature that is likely to continue to preclude sanctioning is the absence of a liner and any foam cushioning on the inside. They tend to be, in effect, steel pots.

M. Farnworth: So given the fact, then, that we have three different agencies that are sanctioning, is there anything in the legislation...? Is there a potential for conflict or a potential problem if, for example, the DOT has sanctioned a particular type of helmet and the other organizations haven't sanctioned a particular type of helmet? Is there anything where they may come into conflict? Let's say you have a helmet that's.... Does it have to be sanctioned by all three organizations, or does sanctioning by just one qualify as a suitable helmet?

Hon. M. de Jong: That's actually a good question. The regulation will operate in a way that confirms sanctioning by any one of the listed bodies as sufficient.

M. Farnworth: So if, for example, you had, I guess, the beanie-type helmet.... If one body sanctioned it and the other two didn't sanction it, the fact that it had been sanctioned by the one body means that it could be used here in British Columbia.

Hon. M. de Jong: A helmet sanctioned by any one of the three agencies that we've been speaking of would qualify for use on B.C.'s highways.

[1020]

M. Farnworth: How will this apply on the use of helmets by people who are coming in from other provinces? I don't know. Let's say they're from Alberta, Saskatchewan or Nova Scotia, their rules and regulations being different regarding the type of helmet that's required in their jurisdiction. So when you cross into British Columbia, will you have to make sure that you have a helmet that meets the requirements under our new provincial regulations, even if you're just visiting or passing through here?

Hon. M. de Jong: We're not anticipating any provision for transitory motorcyclists. In the same way that in the past, for example, some U.S. jurisdictions have not required helmets at all, when you arrive at the border in British Columbia, you'll be required to have a helmet as per the regulations and law in B.C. as in many other areas over the last number of years.

We will likely speak with our colleagues in Alberta and try to take some practical steps to ensure that there is symmetry between the rules, but motorcyclists visiting British Columbia will have to comply with the rules of the road here in British Columbia.

M. Farnworth: I think it's an appropriate place to address this particular issue, under the topic of helmets. This section and its changes — does it impact on the exemptions that currently exist in place for individuals who wear turbans?

Hon. M. de Jong: No impact, hon. Chair.

M. Farnworth: So that exemption is still in place, then?

Hon. M. de Jong: The exemption remains.

Hon. P. Bell: I just missed my opportunity at second reading to speak to this bill and wanted to add a few comments. I think this is the appropriate place, since it concludes the sections that are relevant to new rules relating to motorcycle driving activities, particularly for young people.

There was a very tragic death in my riding, in my community, of a young individual, Dillon Adey, whom I actually coached through his junior golf career a number of years ago. That has spawned certainly my interest in this particular file. I'm very, very pleased to see the work that's gone on by the Attorney General, by the previous Solicitor General the member for Vancouver-Fraserview, as well as the member for Chilliwack in his role.

This is something, unfortunately, that could have been avoided. It was a very tragic death. Dillon Adey's parents, Perry and Cindy, are good personal friends of mine. They have taken on the desire to see this amendment come forward to ensure that young people have an opportunity to reach their full adulthood and enjoy their lives. I'm really pleased to see it having moved through this far. Just my thanks to the Attorney General and to the previous Solicitors General for bringing this forward.

M. Farnworth: Also under subsection 5(8), it refers to the ability of...

"Without a warrant, a peace officer may (a) demand that a person produce a motorcycle safety helmet to allow the peace officer to determine whether the motorcycle safety helmet complies with subsection (3), and (b) seize the motorcycle safety helmet if, on production of the motorcycle safety helmet, the peace officer has reasonable grounds to believe that a person has contravened subsection (3) or (4)."

Is this different from the previous legislation or previous regulations in place? If so, could the minister explain?

Hon. M. de Jong: The short answer is that these are new provisions to ensure that the legal authority exists for the officer to first obtain the helmet for inspection purposes and specific legal authority to retain it if it is not in compliance with the regulation.

M. Farnworth: What would be the current situation? Is the current situation right now that you don't have the abil-

ity to ask to see whether or not a helmet meets a specific standard or whether it indeed has problems with it?
[1025]

Hon. M. de Jong: That's about the size of it.

Sections 5 and 6 approved.

On section 7.

M. Farnworth: I want to confirm. This "permits a peace officer, other than a peace officer who first had grounds to believe a person operated a motor vehicle with a blood alcohol concentration over 0.08 or made a demand on the person to provide a breath sample, to serve a notice of driving prohibition." Then "provides that a person cannot be prohibited from driving under both section 94.1 and section 215.41 of the act."

Can the minister just explain the intent of this and how it, again, also differs from the existing situation?

Hon. M. de Jong: The specific issue being addressed here is the fact that at a practical level, in some instances the peace officer who performs the roadside testing is not the same officer who, also at the roadside, might serve the driving prohibition.

This makes clear that that technicality cannot serve as the basis upon which the prohibition can be overturned. It is to recognize the fact that in some cases, the officer who performs the testing may not be the same officer that physically provides the prohibition.

M. Farnworth: What is the current situation? If today that situation were to arise, does that create...? Is that something that happens right now?

Hon. M. de Jong: Yeah, it has been an issue. A circumstance that might arise today is where a driver has been taken off the road, perhaps kept in custody and the next morning, upon sobering up, is provided with the prohibition. If it's not pursuant to the law and the interpretation of the law, if the prohibition is not served by the same officer that has performed the roadside testing, that prohibition has been overturned.

M. Farnworth: I think one of the things in this particular piece of legislation is that there are going to be sections that deal with situations like this and attempt to either eliminate or tighten up loopholes and ensure that when a penalty or prohibition is put in place, it is able to stick.

My question then: is this something that is now going to be unique to British Columbia, or is it modelled on language that exists in other jurisdictions where these types of changes have been through the court system and are found to stand a challenge?

Hon. M. de Jong: Two things, really. First, I want to point out to the House that we are dealing here with the existing sanctions as opposed to the new ones that I know come up later. This is a response to some unique British Columbia jurisprudence that has arisen.

I think in his second reading remarks, the hon. member highlighted his interest and the interest of the House in at least spending a little bit of time considering the constitutional balance that needs to be struck here.

[1030]

We should do that, and I know we will. That will be particularly important as it relates to the new sanctions and the new provisions contemplated in the bill.

M. Farnworth: I thank the minister for his explanation. This particular change has come about as case law in British Columbia.

Sections 7 and 8 approved.

On section 9.

M. Farnworth: Section 9 "permits the superintendent, on review of a driving prohibition, to consider additional relevant documents and information, including information that has not been sworn or affirmed to determine what weight should be given to these documents and to proceed with the hearing in the absence of receiving all the documents required to be forwarded under section 94.3 of the act."

I take this to be that if a prohibition has taken place, then the superintendent can consider additional information that may not have been there at the time the prohibition was made and makes reference to documents. Can the minister give me some idea of the scope of that? I mean, what sorts of documents are anticipated? What sort of, I guess, additional information might be being considered?

Hon. M. de Jong: The problem that this is designed to address is a circumstance in which a review is conducted. There have been, to this point, very strict requirements about the nature of the material — so not just a statement, for example, but a sworn statement. That can operate both ways. The police officer statement might be deemed inadmissible upon the review, or a driver statement for not being sworn.

What's being created here is some additional discretionary authority on the part of the superintendent to examine relevant documentation and to make some decisions about whether or not it can properly and fairly be considered as part of the review exercise.

The Chair: The member for North Coast seeks leave to make an introduction.

Leave granted.

Introductions by Members

G. Coons: In the gallery today we have a group of students and two chaperones from the Heiltsuk Nation. They're from Bella Bella Community School. I visited the school last week with intern Kate McBride.

In the gallery we have Kevin Gladstone, Cody White, Jaylyn Gladstone, Rennell Mason, William Dixon, Richard Wilson Hall and Aaron Wilson, along with the two chaperones, David Applebaum and Sonny Hunt. They're down here from Bella Bella to look at options after high school and look at post-secondary options in Vancouver and up and down the Island, seeking out what they can do and what's available. So please make them welcome.

[1035]

Debate Continued

M. Farnworth: What I understand from the minister's explanation, then, is that currently this is, in essence, a relaxing of the requirements to be able to provide additional evidence and that it's an expanding of the discretionary powers of the superintendent.

The effect of this, then, is that if someone comes forward with what they believe to be valid evidence as to why they should not have a prohibition, then under the previous — or what will be the previous — legislation, unless it was in a certain format or had been sworn in a particular way or received according to a much stricter criteria of rules, it could or could not be accepted.

What we're saying now is that okay, we're tightening up penalties. But at the same time, if you have evidence to present as to why you should not be the subject of a prohibition, it's less onerous on the officer who has initially charged you or, in this case, not charged but recommended, decided that you're going to get the driving prohibition. Also, it's easier for you to say: "Look, here's why I should not be getting that prohibition." If I'm correct, I would appreciate the minister on that.

Hon. M. de Jong: I think that is largely correct. These provisions would have application to the existing regime of sanction, and similar provisions will exist with respect to the newer regime of penalties elsewhere in the act, but the analysis is essentially correct.

M. Farnworth: In the same section 9 we're adding two new subsections:

"Despite subsection (1), the superintendent may, in the superintendent's discretion, proceed with a hearing whether or not the superintendent has received at the time of the hearing all those documents required to be forwarded to the superintendent....

"(2.2) The superintendent may determine the weight to be given to any document or other information referred to in subsection

(1) (c.1), including any document or information that is not sworn or solemnly affirmed."

Again, we're adding these two sections that deal with discretion. Is the minister confident in how that discretion is exercised in terms of the ability...? It can be sometimes very subjective in how discretion is exercised. Is there any expectation or standards to be followed that will guide the term "discretion"?

[1040]

Hon. M. de Jong: I think the member's characterization of the fact that there is an element of subjectivity involved is correct. I suppose discretion, by its very nature, is subjective. I can't pretend to be able to identify every conceivable circumstance that might arise in the case of a review. There is documentation of the sort we have discussed — statements sworn or unsworn, certificates relating to roadside breath-measuring devices.

The issue that is trying to be addressed here is to avoid a circumstance where the ability to conduct a fair examination is absolutely hampered and inhibited by a very technical requirement. Now, the exercise of that discretionary authority is ultimately subject to review by the court. So to the extent the member has pointed out that it must be wielded responsibly and consistently with the principles of fairness, I think it is a fair comment.

B. Ralston: On section 9. As the minister may know, in the present legislation enabling 90-day prohibitions, there's a requirement that the material placed before the reviewing officer either be sworn or affirmed, and that's a relatively simple procedure. Typically, in most police stations there's an officer in charge who has the authority to take a sworn statement or an affirmation. Those documents are then submitted to the superintendent. That would seem to be at least a minimal procedural protection to the person involved.

What seems to be being contemplated by this amendment is to no longer require that. I think that if this amendment should pass, the entire police officer's report not sworn or solemnly affirmed would then be before the reviewing officer for that purpose.

I'm wondering: is that the intent of the amendment? If so, why is it thought necessary to proceed in that way, given that the requirement to swear or affirm the material that's to be placed before the reviewing officer is a relatively simple one to comply with?

Hon. M. de Jong: A couple of things. First of all, I agree with the member. The requirement that certain documentation be sworn is not an overly onerous requirement, and the expectation remains that that will occur.

[1045]

But as the member will also know, in dealing with prohibitions, the individual involved will have a particular

interest in having the matter dealt with as expeditiously as possible. To avoid a circumstance where there is a delay resulting from the fact that a technical requirement like the one the member has referred to has not been complied with, what has been created is the discretionary authority for the reviewing individual to consider the material in its totality and make decisions about the weight that should be assigned to that evidence upon the review.

Yes, it is discretionary, but I would suggest that in these circumstances, there is also an interest on the part of the individual involved not to have the matter linger. Their interest is to have the review go forward and deal with the evidence such as it exists at the time.

B. Ralston: Well, I'm sure the minister will be advised that one of the concerns, and this has been the subject of judicial review, is that if a report is not sworn or solemnly affirmed, then the case is upheld that it has no evidentiary weight, and therefore, the prohibition is not upheld. That would seem to be an amendment that's designed to sidestep that judicial interpretation of the act as it stands now.

The minister does mention dispatch in having the hearing. What the other proposed amendment in section (b) proposes is that the hearing could proceed "whether or not the superintendent has received...all those documents required to be forwarded to the superintendent under section 94.3."

I suppose it begs the obvious question. If there is a statutory requirement to have certain documents before the reviewing officer, this amendment works at cross-purposes and says you can go ahead and have a hearing even if you don't have all the documents that are required statutorily. Can the minister explain that contradiction?

Hon. M. de Jong: As I mentioned in my earlier answer, when we're dealing with these kinds of prohibitions, there will generally be an interest on the part of the individual to have the review take place as quickly as possible.

The scenario the hon. member is describing... We think about how that will play out. The party shows up for the review and the documentation — let's call it the Crown documentation that is required to be there, in this case — part of it is missing. Rather than in all cases create a circumstance in which the review must be postponed, the option of proceeding exists.

I think the member's point, or perhaps his question, is: in that case, in the absence of that, what is the result of the absence of that documentation?

[1050]

It would seem to me that depending on what is absent, in many instances that will accrue in the favour of the individual involved. Where the necessary documentation isn't before the reviewing official, rather than have

the process delayed and remain subject to the prohibition, the result that would follow would operate in that instance, in many instances, in favour of the citizen, of the driver involved.

B. Ralston: Well, I'm not sure that there's.... The minister may consider that it's in the public interest to bring these matters to the hearing as expeditiously as possible without adjournments. But as the minister will well know, in certain cases with great notoriety, cases are often delayed in judicial processes because it's felt that that's necessary to achieve justice.

Leaving that aside, the proposed amendment (2.2), where "The superintendent may determine the weight to be given to any document...including any document or information that is not sworn or solemnly affirmed...." Would the minister agree that what this will lead to — and this is the intention of this — is that a simple filing of a police report and a copy of the police officer's notes, unsworn and not affirmed, will form the evidence on which these hearings will routinely proceed in the future?

Hon. M. de Jong: That's not the intention, although I understand the nature of the member's question. The expectation is that the statements of the sort the member refers to will continue to be sworn.

B. Ralston: Will the minister not agree that the combined effect of these amendments in section 9 is that with impunity — in other words, with no legal obstacles — a decision could be made by the superintendent without any material being sworn or affirmed in the manner referred to in section 94.3 and that that will become the routine standard since there's no prohibition to it?

It's more administratively convenient, and perhaps, as the minister says, the concern here appears to be being expeditious. Will the minister not agree that that's likely to become the standard procedure in the future and that that is indeed the reasonable conclusion to draw from the way these amendments are drafted?

Hon. M. de Jong: I'll say this in response to the member. I agree with him that that is a risk, but it is neither the intention nor my expectation. I will concede this to the member: he has identified a potential risk.

B. Ralston: Since the minister identifies it as a risk — and that's his choice of language — can he explain why he, in bringing forward this legislation, is prepared to countenance what he describes as a risk?

Hon. M. de Jong: For reasons that I think have been discussed earlier in these proceedings: to provide additional discretionary authority and flexibility in the conduct of these hearings. And it's proper, actually, for the member to do this.

We have talked about it from one perspective, but the same flexibility and subjectivity can also operate very much in favour of the individual driver as it relates to material brought before the reviewing officer.

[1055]

M. Farnworth: I just want to pick up on that question again, coming back to the individual. If the minister could clarify the type, then, of information that you would be anticipating coming forward. There must be, in terms of making this change, a recognition of the issue from the officer bringing a non-sworn affidavit, and now you have the individual bringing forward their type of information. So there must be some sense of what that information may entail, what format it may entail. If the minister could answer that, that would be great.

Hon. M. de Jong: From the point of view of the individual involved, that material would include their statement; the statements, perhaps, of witnesses; the statements, for example, of individuals disclosing or making submissions that the person to whom the prohibition has been applied wasn't there, was elsewhere. Photographs, I suppose, might be another example — the whole range of documentary material that might find its way before the superintendent upon a review.

N. Simons: I'm just wondering what precipitated this particular amendment. What evidence did the Attorney see that suggested this was a necessary amendment?

Hon. M. de Jong: Some of the jurisprudence and some of the constraints that were being placed around the ability of the superintendent to proceed in the absence of strict adherence of existing requirements.

N. Simons: So in effect, the superintendent of motor vehicles recommended that the dispensation or disposing of this safeguard was necessary in order to maintain the schedule. I'm just trying to figure out, in terms of the practical application of this, how relevant was it in the day-to-day operations of the superintendent, or the hearings in particular?

[C. Trevena in the chair.]

Hon. M. de Jong: It was certainly a recommendation. I wouldn't characterize it as being motivated by a desire to dispense with safeguards, but there was clearly a recommendation and a request that the existing provisions be altered to afford greater discretionary authority in the conducting of these review hearings.

I should also say that I'm mindful, and I hope the member is as well, of the fact that the procedural fairness that I think all of us are discussing here must be maintained,

and the continued court oversight is ultimately a guarantor that it will.

N. Simons: The Attorney acknowledges that risk. How are we going to assess whether that risk requires further legislative change if that risk, which the minister identifies as possible, is that safeguards are, in effect, weakened? How will that be addressed subsequently?

Hon. M. de Jong: That's a fair question. We'll have to assess it both in terms of the manner in which hearings are conducted at a practical level, and clearly if there is judicial intervention, we'll have to assess that. That's a broader theme that I think we're coming to with respect to some of the other provisions here.

[1100]

Sections 9 to 14 inclusive approved.

On section 15.

M. Farnworth: Section 15 "authorizes the making of regulations for the purposes of section 34 of the act as amended by this bill" and "makes amendments consequential to amendments made to the act by this bill."

So under this section, what you're saying is that this is authorizing regulations to be made. What regulations are being anticipated, and what's different from the current existing situation?

Hon. M. de Jong: I'll try to go through it in the order they appear.

Sub (a) relates to a regulation-making authority for the seasonal workers — that section of the act relating to their ability to drive on their country-of-origin licence for upwards of a year. Sub (b) is consequential — (b) and (c) — and (d) is the regulatory authority for differentiating fees as between written and oral hearings.

Sub (e) relates to ensuring.... There has been some issue.... The desire has been to differentiate impoundment and towing rates depending on, for example, the size of a vehicle. This is to ensure that the statutory authority exists in order to do that.

M. Farnworth: I guess the reason for the question on here is.... As we've seen in some legislation, the idea is that there's going to be a regulatory framework done by order-in-council at a later date. I want to get a sense that what's anticipated in this section is really dealing with these particular issues here and that we're not anticipating a regime of regulation coming in by order-in-council at a future date to deal with other significant areas of the legislation. Is that correct?

Hon. M. de Jong: It is. I thought that might be the member's concern, which is why I tried to specify the

specific areas. It's hard sometimes with numeric references — cross-references — but those are the specific areas that are being addressed.

Section 15 approved.

On section 16.

M. Farnworth: This is, I think, a key section of this bill that deserves some discussion. It "permits a person, whose ability to drive a peace officer believes to be affected by a drug other than alcohol, to request the peace officer to administer a physical coordination test, and provides that if the person satisfies the peace officer that his or her ability to drive is not affected, his or her prohibition from driving is terminated."

[1105]

The first question I ask is: how is this different from what exists at the current time?

Hon. M. de Jong: I'm advised and can advise the member that a similar review provision exists today with respect to suspected impairment by alcohol. It does not exist today for drugs. What this does is expand that review option to include situations where the suspected agent of impairment is drugs.

M. Farnworth: The section also says: "adds authority to prescribe physical coordination tests for the purposes of the section." So that's what's being added then. Right now we can do the physical coordination tests for alcohol. But those, I take it, from what the minister is saying, will be different or are different from the physical coordination tests for drugs. Or is it the fact that unless it specifies alcohol...? The regime currently specifies only alcohol; therefore, you can't do the tests for drugs because that's not currently allowed for. Is that correct?

Hon. M. de Jong: I think I inadvertently misled the member in terms of the differentiation.

Today the review that you can ask for with respect to alcohol is not necessarily a physical coordination test. It is a breathalyser. So a 24-hour suspension — a driver says, "No, I disagree. I want a breathalyser," and they have that option. There's no similar provision where an officer says to a driver: "I think your ability to operate a motor vehicle has been impaired by drugs, and I'm issuing you a 24-hour suspension." There's no similar ability to request a review. In the case of drugs, it is a physical coordination test as opposed to a breathalyser test.

M. Farnworth: What we're saying, then, is that if I am the officer and I suspect you of being impaired, I can ask you to blow the breathalyser. I can also ask you to do a physical coordination test in terms of the hand-nose thing, which we've all seen on TV. But in the case

of drugs, you can't. There's no anticipation, then, of any other test in this section other than the physical coordination test in regard to drugs — is there?

Hon. M. de Jong: I think the issue and the difficulty here is a very practical one. Whilst there is a way to seek to confirm the findings of a roadside screening device through a more detailed breathalyser instrument, I am advised that there's no proven technology — and certainly no proven technology available at the roadside — to do that with respect to drugs.

[1110]

So this specifically enumerates an option for a driver who is being accused of impairment by way of drugs to ask and be entitled to the option of performing a physical coordination test to demonstrate that they do not have the impairment that the officer is suggesting.

M. Farnworth: One of the questions I think this section raises around the issue of tests is the fact that tests, unless specified, can be subjective. What one officer may deem to be an appropriate type of test may be completely different for somebody else.

So my question is: is there a standard test that is to be prescribed, or is it just up to the officer to decide whether or not you have to touch your finger to your nose or whether you've got to basically do literally a balance beam routine to prove whether or not you're under the influence?

Hon. M. de Jong: I think the short answer is yes. I was not aware of this. There is, apparently, under the provisions of the Criminal Code of Canada and the regulations, a prescribed physical test for this sort of thing that we intend to adopt for application in these instances. So it's a three-part test that involves an eye examination, a balance test and one other thing that eludes me at the moment.

M. Farnworth: Is it the same test for both alcohol and drugs, or is it a different test for each?

Hon. M. de Jong: Although it has evolved, I think originally it was designed to address both circumstances — so general impairment. But I think the point here is that the far less subjective way of dealing with alcohol is through the use of the breathalyser instrument.

M. Farnworth: I think it's an important distinction, and I think it's an important point to recognize. The breathalyser is specific, and I think that's important. When we come to later sections, that importance becomes even more clear when you're determining the types of penalties that are going to be assessed and the length of driving prohibitions.

When we're dealing with this particular section, as the minister said, we're dealing with an issue — in this case,

drugs — where the impairment is not, at this particular point in time, readily measurable by a technological device for any sort of accuracy.

Therefore, we have to rely on a physical impairment test. I think it's only fair to ensure that people are treated fairly — that there is a sense that the test that is being administered is a standard test and that the officers administering that test are, in fact, fully trained and fully experienced in the administration and of what to look for in that test.

Is that test already standard in B.C.? Is it going to require additional training? Can motorists be assured that, in fact, officers are fully versed in the test that's going to be given, given that this is, in fact, a new section that will be added with the passage of this legislation?

[1115]

Hon. M. de Jong: I think that's a very important question. The test is standard. Officers are familiar with it, especially those involved on the traffic and driving side. They will be familiar with it. It is a standard part of the Criminal Code provision investigation.

The difference here is that the provision we're dealing with in the act authorizes or confirms that a driver has the right to ask for it to be performed, to ask for it to be administered, as a way of demonstrating that the 24-hour prohibition being considered or having been issued is not appropriate.

B. Routley: I ask for leave to make an introduction.

The Chair: Proceed, Member.

Introductions by Members

B. Routley: We have with us a group of grade 8 students from Lake Cowichan Secondary and their teacher, Ms. Kyla Bridge. I would ask that the House make them feel welcome.

Debate Continued

B. Ralston: Well, as the Attorney may know, this section illustrates to some extent the difficulty that police officers on duty have in making the determination that someone's ability to operate a motor vehicle may be impaired by drugs other than alcohol. As the Attorney may be aware, there is a program, a training module for peace officers, which would entitle them to be recognized as... I think it's called a drug recognition expert. It involves a different set of skills than those that are associated with recognizing impairment due to alcohol.

My question is this, though. Since this is the way in which a person would be tested in order to prove the contrary — that they were not impaired by a drug — is it the intention of this legislation that in order to come to the

conclusion that someone's ability, for the purposes of a 24-hour prohibition, is impaired by a drug, the peace officer would be required to go through the procedures that are set out, I believe, in the federal Criminal Code that were referred to earlier by the minister? Is that the procedural safeguard in the sense of coming to that conclusion?

As the minister can appreciate, it's very difficult for a peace officer without training — and even with training — to make what is sometimes a more honestly subjective judgment about impairment by drugs, since the effects of drugs are variable and not always so easily discernible as the more commonplace symptoms of impairment by alcohol.

Hon. M. de Jong: I think the best way I can answer the member's question.... I'm obliged to him for drawing attention to the training that is taking place, but in part, I want to be clear that we're recognizing the fact that today the numbers of officers who have received the enhanced training that the member refers to are not sufficient to in any way suggest that anywhere near a majority of the officers charged with traffic enforcement and conducting the investigations are going to have received that training.

One of the things I'm sure the member has noted in reviewing the act is that the escalating penalties that we are going to come to later do not at this point apply to impairment by drug substances. The numbers of peace officers possessing that enhanced training just aren't sufficient at this point to warrant us to go forward with that with confidence.

M. Farnworth: Section (8.1). When I read this.... Perhaps I'm reading this wrong, but the first part of section (8) says:

"If a driver who is served with a notice of driving prohibition under subsection (3) (a) forthwith requests a peace officer to administer and does undergo as soon as practicable a prescribed physical coordination test, and (b) satisfies a peace officer having charge of the matter that his or her ability to drive a motor vehicle is not affected by a drug other than alcohol, the prohibition from driving is terminated."

[1120]

In essence, if I'm told, "I believe you're impaired not because of alcohol but because of a drug," I have the ability to say: "No, I'm not. I want a test." The officer can prescribe me the physical test. I can do that test. I pass that test, so that prohibition is removed. That takes place right then and there. Or does it have to take place at another location besides where I've been pulled over and given the prohibition? Is that correct?

Hon. M. de Jong: It's intended to take place at the roadside.

M. Farnworth: So having established that and that ability, then in subsection (8.1):

"Despite subsection (8), a driver who is served with a notice of driving prohibition does not have a right to request or undergo a test under subsection (8) (a) if (a) the peace officer who served the notice first administered a prescribed physical coordination test, and (b) the... officer used the results of the test as part of the basis on which the peace officer formed reasonable and probable grounds to believe that the driver's ability to drive a motor vehicle was affected by a drug other than alcohol."

That becomes somewhat subjective in a sense that I've asked for a test, and I have passed that test. But I don't have the right to ask for that if the prohibition is.... There's a discretion element that I think is quite broad. I wonder if you could describe what is that broadness in section (8.1) that is not there in section (8)(a). What is that attempting to capture? What sorts of examples is the minister anticipating?

Hon. M. de Jong: I'm not sure it's a question of examples, but I think the principle that this section as a whole enshrines is this. With respect to suspected cases of drug impairment where the only practical means of testing for that is the physical coordination test, you only do one test.

If the officer issues a prohibition without having you perform the test, you have the right to demand performing the test. But if the officer has stopped the individual, drawn the initial conclusion and had the driver perform the test and then determined that the person failed the test, the individual doesn't have the right to demand a second physical coordination test.

M. Farnworth: The individual does not have the right, in other words, to get a do-over. But then in section (8.1) (b) it also says "as part," which means that there are other factors. If we're determining that the reason one is impaired is by way of the physical test, what other factors are anticipated then? What are the other parts that are anticipated in terms of making the decision that there is a prohibition?

Hon. M. de Jong: There might be a myriad of factors from speech patterns, observation of the eyes. Odour in the car might be another one. There's a range of other indicia, if you will, that might form the basis for drawing a conclusion.

B. Ralston: This section contemplates the ability of a person who is the subject of a prohibition on the basis of suspected impairment by drugs to request being subject to a physical coordination test.

[1125]

I suppose the practical problem arises if the officer that the person is dealing with is not trained. That's a separate training module for most peace officers. In jurisdictions like Surrey, which has the largest number of RCMP officers of any jurisdiction in Canada, many of the officers' level of experience is in the one- to four-year

range. Often they haven't had the opportunity to receive that kind of additional training.

As a practical matter, can the minister explain what the legislation contemplates if someone requests that? If the officer present is not able to conduct the test, is there a continuing right to wait? Is there a reciprocal obligation on the part of the police to provide an officer who is trained to conduct this kind of physical coordination test?

One can well imagine that this would arise as a practical situation, and I'm sure the police would be pleased to have the guidance of the Legislature on this point.

Hon. M. de Jong: I'm not sure I agree with the member. Most officers involved in this on a regular basis have received training around the administration of physical coordination tests as a means of identifying alcohol impairment.

I thought what the member was referring to earlier, which I agreed with, was that the enhanced training around the recognition of impairment caused by drugs is specialized, and there are not as many officers. But most officers have received training, particularly those on the traffic enforcement side, on administering the physical coordination test.

B. Ralston: I agree with everything the minister says, but this is the case where the person is impaired allegedly by a drug. So the field of prospective people capable of conducting the test is smaller. I think we agree on that.

In that circumstance, where a person makes that request, how is it proposed as a practical matter, should this amendment pass, that the police deal with that? As the minister has acknowledged, there are many fewer officers with that specific training, and this section is to enable one to receive the test to challenge a judgment that their ability to operate a motor vehicle is impaired by a drug other than alcohol.

Hon. M. de Jong: Well, my expectation is that in these circumstances, where an officer is confronted by a request for the physical coordination test to be administered, they would do so and record their observations.

The fact that the officer may not have the additional training that allows them to pinpoint particularly the nature of the drug causing the impairment, I suppose, is limiting in a certain sense. But having received the training to provide the basic physical coordination test, the officer would be in a position to record his or her results and draw the appropriate conclusion. If the driver chose to have the matter reviewed, presumably those results would be placed before the reviewing officer for a determination.

M. Farnworth: This is an appropriate place to actually bring up this particular question. In essence, with

this section and the subsequent section, what we are doing is now establishing something different from what exists. We are now separating out alcohol and making a provision to do a roadside suspension on the basis of a belief that you are impaired because of the use of drugs — that that is causing impairment as opposed to alcohol.

In legislation we are now specifying in a way that we didn't have exist under the current act. This is a change — right? The reason it's in there is to allow for the prohibition on the basis of a suspected impairment of drugs — the three-, five- and seven-day. If I'm wrong, I'd like the minister to tell me.

[1130]

Hon. M. de Jong: It's a change. I'm not sure it's the one the member has identified, though. There has been a right to provide 24-hour suspensions in the cases of impairment by alcohol and impairment by drugs. What did not exist was the means for a driver to seek the do-over or the roadside review, and that is created here. But I hope members understand I'm not suggesting....

The legislation is a reflection of the limitations that exist around the question of drug impairment, which is why those other provisions that we are going to deal with later, dealing with enhanced prohibitions, do not apply on the drug side of the equation.

M. Farnworth: I agree exactly with the minister's explanation. We do CounterAttack programs. We focus on alcohol. With this section the point I'm making is that there is also that emphasis on drug impairment. So the question I'm going to ask the minister at this particular point is.... We're doing CounterAttack programs that focus very much on alcohol, and that's a message that's being communicated to the motoring public.

My question, then, is: are we now going to see an emphasis as well on drug impairment — that you can find yourself doing a roadside test that's going to result in you also getting a roadside suspension? The CounterAttack program is primarily focused on alcohol. Now, I'm wondering, is there going to be an increased emphasis or a raising of the profile that it's also drug impairment as well?

Hon. M. de Jong: First of all, I agree with the observation that says impairment by any cause is impairment. Obviously, we've talked about alcohol. We talked about drugs. Most people, me included, when we talk about drugs.... Maybe I shouldn't speak for others. I tend immediately to think about illegal agents — marijuana or other illegal substances. It is also possible to be impaired by prescription drugs and any number of over-the-counter drugs that specifically urge people, recommend, that they not drive. Those are all relevant considerations.

I think, in fairness, the member's question may relate to the degree of profile we intend to place on that. There may be some, but I also don't want to leave an incorrect impression. I think the focus is largely going to remain on alcohol, which is, unlike illegal narcotic substances, a lawful substance that people utilize and far too frequently then drive.

The point is a good one, but I don't want to suggest there is a major shift in the works in terms of a public information campaign.

Sections 16 and 17 approved.

On section 18.

B. Ralston: I think this may be the answer to the question that I posed earlier, in the sense that if a test is requested for serving of a driving prohibition on the basis that the person was impaired, that their ability was impaired by drugs, the proposed section (a.1) would be the response to that. If they requested it and the officer was unable to administer it, then the prohibition would be terminated at that point. Is that the response to the question I posed earlier?

[1135]

Hon. M. de Jong: The member might be partly correct. I think the scenario that's being dealt with here is where a roadside 24-hour prohibition has been provided and the individual has sought the opportunity to perform the physical coordination test, as per their entitlements under the legislation, and where the officer has, for whatever reason, chosen not to administer that physical coordination test — it is conceivable, I suppose, that it is because he or she doesn't know how — and that provides grounds for the driver to seek review of the prohibition before the superintendent.

Section 18 approved.

On section 19.

M. Farnworth: Section 19. This is a lot of new material which I think is really the heart and, in many ways, the guts of this particular piece of legislation. It deals with definitions around the "driver," "approved screening device," "fail," "warn." We're looking now at making a major shift in terms of where, down from .08 to .05....

I wonder, before we get into the details of this section, if the minister at this particular point could address some of the questions around the consultation and the determination going into this particular section — the questions, I think, around the potential for legal challenges and how they were crafted to ensure that, in fact, we are on solid ground in terms of making these sections actually work.

Hon. M. de Jong: I'll try to do this succinctly, and then the members can probe individual areas.

[1140]

I thought the first thing I should point out.... In the conversations I've had outside this chamber, a little bit of an impression seems to have arisen — and I might be partly to blame for that by virtue of how we've communicated some of these changes — that for the first time, there will be sanctions associated with driving within that warn period, .05 to .08.

That's not in fact correct. Sanctions exist today. They are limited, at the regulatory stage, to 24-hour suspensions, and that clearly is increasing. But the notion that one shouldn't drive when a blood-alcohol reading would be between .05 and .08, in the warn stage — that exists today.

The broader question, though, that the member alludes to is one that engaged a lot of attention, because this member — the member from Surrey, as well, given his experience — knows that there is a delicate balance between regulating for public safety and what the courts deem to be the creation of a backdoor Criminal Code offence.

The best thing I can do in this chamber is convey to the members that we have been alive to those issues, have sought and relied upon the advice of those who have scrutinized closely the constitutional jurisprudence, tried to settle on sanction amounts that would operate in favour of the kind of judicial finding that we're looking for, tried to settle on review provisions that addressed questions of procedural fairness and have tried to go through the checklist of Charter and constitutional-related arguments that undoubtedly are going to be brought.

I suppose the one thing we can say with certainty is that my statements in response to the member's questions are going to be tested, I suspect relatively quickly after these provisions are enacted and begin to operate, because someone will want to.... The sanctions are significant enough that at some point someone is going to test them. I suppose the flip side of it is that if that weren't so, it was probably because the changes contemplated weren't significant enough to cause anyone any concern.

So we've sought the advice. We've tried to contemplate and anticipate what the arguments are going to be. We've relied on the jurisprudence that exists now in terms of applying the tests that a court would likely apply and believe that, by virtue of its presence in the Legislature, we have landed at a spot where, at the end of the day, the provisions will be upheld as meeting all of the constitutional tests that presently exist.

Hon. K. Falcon: I seek leave to make an introduction.

The Chair: Proceed.

Introductions by Members

Hon. K. Falcon: Today in the galleries we're joined by a number — in fact, I think 40 — of grade 5 students from Cloverdale Catholic elementary, which is a great Catholic school in my riding. They are also joined by their teacher, Mr. Matthew Klaponski, along with a number of parents that have taken time to come here and be with their students while they tour through the Legislature. I would ask the House to please make them all feel welcome.

Debate Continued

M. Farnworth: I thank the minister for that explanation, because I think one of the issues.... I think he rightly says that if it was deemed not to be a significant change, then you would not be that worried about the issue of challenges, because we have existing case law and jurisprudence in place. But with this particular section we are in fact expanding to three-, seven-, 90-day suspensions, and that does make some significant changes.

One of the issues that I think I'm looking for some sense that it's being considered is that.... Yes, we have the ability right now, through the 24-hour, but there's discretion attached to that.

[1145]

I think that whenever you expand the consequence and that level of discretion still stays in place, you open and you widen the scope of the basis upon which something can be challenged, because then the question of fairness comes in, in terms of why in this case and not in that case, and that issue of discretion.

One of the questions that I want to ask the minister is: how is that balance between discretion...? Has the ability of discretion been expanded? For example, in the warning range is it definitive or is it discretionary in terms of whether to do a prohibition? And in that, for example, besides just the warning that you're being given — let's say you're in the warning zone — would at that point, then, the physical tests also come into play? So you would do a breathalyser. You may blow in the warning range.

The officer could also then decide, "Okay, I'm going to administer the physical test," and have you do a physical test, and you pass that. In that case you may get the warning, and you may get on your way with a warning, as opposed to if you fail it, you're going to get the three-day or the five-day, whatever the appropriate penalty is. Is that what's anticipated? Is that where the discretionary aspect of this is anticipated to be?

Hon. M. de Jong: I think the member has identified an important concept in this, but I might take a moment to describe how I think it applies. It might be

slightly differently than what the member has described for the House.

Insofar as the investigating officer is concerned, the notion of discretion first arises as he or she is formulating, pursuant to the Criminal Code, whether or not there are reasonable and probable grounds to make the demand for the sample of breath.

Now, once that happens.... Again, it has been some time since I have been an active participant in the courts and in the procedures that govern this, but there are some terminology things that can help us a little bit. What police officers at the roadside have and rely upon is something called a roadside screening device, which is different than a full-blown breathalyser machine. Breathalyser machines, the ones I used to see, provide a specific reading from a sample of breath.

The roadside screening devices — and I think this is still the case for the ones being used — are calibrated in such a way as to reveal whether.... There are basically three lights: pass, warning, fail. They're calibrated in a way that determines when you're within a certain range. If you're below .05, you pass. From .05 to .08 they tend to err on the side of caution and then calibrate slightly upwards. Anyone that blows a fail, assuming the device is operating properly, is certainly above .08.

At that point, when the roadside screening device test has been administered, there's really no discretion being exercised there. If it blows a warning, the prohibition follows. Then there is the accrued number of days, depending on how many offences, how many times a driver has been found to be in that position.

There's a secondary exercise of discretionary authority at that point which relates to the impoundment of the vehicle and for how long. But the basis upon which the prohibition is administered in the case of alcohol relates to that roadside screening device.

[1150]

I'm going to suggest to the member that that key part of the transaction is fairly objective and relates to the technical finding of the instrument that is being used. Now, the member knows — we come to it later — that there's a section that allows a driver to say: "I don't get that. I haven't had anything to drink. I don't know how I blew a warn. I want a second test from a second machine — a second roadside screening device."

That provision exists elsewhere, but whilst I acknowledge, as in these matters, that there are elements of the investigation that rely upon the training, the experience and the exercise of discretionary authority, the basis upon which the prohibition is administered is tied directly to the results of a technical device — the roadside screening device.

M. Farnworth: That's the point I want to get to because I think it's important. Looking at this from the perspective of the driver who is pulled over in a roadside check,

you get the screening device and this green, yellow, red. Red is straightforward. You do not pass go. You've got a problem. Currently the yellow warning is.... There is a discretion there.

In essence, then, the discretion on that is now being significantly narrowed with this legislation, and I think that for many people or.... From the discussion and questions I am asked as to how this new legislation will work, there is a sense that the officer can say.... You know, you could give a three, but the reality is that you will get a three if it's your first offence. So that discretion is no longer there at the warning stage. I just want to make sure that I am correct on that particular point, and I see the minister nodding.

After that, though, you then.... If you're concerned, then that is when you have the ability to say: "I want a second." That would be what the minister's talking about in terms of the full-blown breathalyser test. Or would it be another roadside screening device that you're...? And that would be a separate roadside screening device administered by the same officer or by a different officer? It could be the same...?

Hon. M. de Jong: It would be a separate roadside screening device, possibly administered by a different officer, possibly by the same. But I should, again in the interests of full disclosure.... That won't be an issue immediately in the larger urban centres — the Lower Mainland, southern Vancouver Island. In some more rural parts of British Columbia not all officers will immediately have two roadside screening devices with them, so in the more rural areas that is something that we'll have to contend with.

M. Farnworth: Mindful of the time, I move the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 11:54 a.m.

The House resumed; Mr. Speaker in the chair.

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

[1155]

Committee of Supply (Section A), having reported resolutions, was granted leave to sit again.

Hon. M. de Jong moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 1:30 this afternoon.

The House adjourned at 11:56 a.m.

PROCEEDINGS IN THE DOUGLAS FIR ROOM

Committee of Supply

ESTIMATES: MINISTRY OF ENERGY,
MINES AND PETROLEUM RESOURCES
(continued)

The House in Committee of Supply (Section A); J. McIntyre in the chair.

The committee met at 10:08 a.m.

On Vote 28: ministry operations, \$54,450,000 (continued).

The Chair: Good morning, everyone. I'd like to call Committee A to order. This morning we'll be doing the estimates of the Ministry of Energy, Mines and Petroleum Resources.

Hon. B. Lekstrom: Hon. Chair, if I could, yesterday there were some questions. I would like to correct the record on one of the answers that I gave. One of the members asked about the tickets and the names of the ticket recipients for the Olympics. I indicated that they were all posted on the website of B.C. Hydro at this point.

I want to make a correction that more than half of the ticket recipients' names are posted. They are continuing to contact the other people so that those names can be posted. As soon as we have contacted those members or those participants that received those, we will follow through and post those as well. So just for the correction.

Also, there were a number of requests for information. I do have three of those documents that I will hand over to the members opposite. They had asked for the technical request-for-proposal document; also the independent observer for the clean power call, the invitation for the RFP; as well as the risk assessment for Deloitte Touche. I'll have those delivered over to the members now.

[1010]

As well, we are going to enter into the Columbia Power Corporation estimates this morning. Joining me is Greg Reimer, to my right, my deputy; as well as Lee Doney, who is the board chair; and Audrey Repin, who is the director of communication and community relations.

J. Horgan: I thank the minister for correcting the record. The member who asked the questions is not in

the committee currently, but I'm hopeful that we'll get an opportunity before we run out today to get a more fulsome explanation as to why the minister didn't have accurate information yesterday. But I'd rather move on at this point in the time available.

I want to ask the minister: what is the current state of the Waneta expansion project? And I want to frame that question.... We've been now in our 15th year since the creation of the Columbia Basin Trust–Columbia Power Corporation agreement to proceed with three power projects in the Columbia Basin. The first to be completed was the Arrow Lakes or Keenleyside project. The second was the Brilliant expansion project, and the third was to be the Waneta expansion project.

This was an agreement between the province and the people of the Columbia Basin, and to this point in time it appears that there is a problem within the organization — whether it be Columbia Power, whether it be Columbia Basin Trust, whether it be the clean-call process.

The Waneta project is not just about energy. It's about capacity. It's not just about energy and capacity; it's about an entitlement. It's not going to affect hydrology, and it's not going to affect fish. It's an existing facility on a very, very well-managed river system.

It's a curiosity to those who see independent power projects making it through the clean call that are interruptible, like the Finavera wind projects — by a company that's been given four contracts, that has never, ever erected a wind turbine in its history — when we have the Columbia Power Corporation, which has two successful projects under its belt of providing clean, green energy to the people of British Columbia, and the third project is languishing.

I was wondering if the minister could explain to this committee why that is.

Hon. B. Lekstrom: This is a complex project. It is ongoing. The work is continuing, and there are negotiations with a third party — being Fortis — who has expressed an interest.

Certainly, you talked about both energy and capacity. Capacity has a value as well, and both the CBT and the CPC — Columbia Basin Trust and Columbia Power Corporation — are working together on this. Very optimistic, I think, that we're going to be able to see this project proceed.

What I found interesting.... And I do agree that an existing river and an existing system that can be built upon, similar to what we're talking about with Site C.... I think there's great opportunity there.

J. Horgan: The minister knows full well there is no comparison between the amount of hydroelectric activity on the Pend-d'Oreille and the Kootenay and Columbia rivers. There are two facilities on the Peace.

I thought he knew that. The closest one to Site C is 83 kilometres away. There is no comparison whatsoever to the two scenarios.

[1015]

But leaving that aside, let's go back to the question at hand. The minister raised Fortis. I was peripherally involved in the creation of these two entities some 15 years ago, and I don't recall ever seeing Fortis written into any agreements between the province and the Columbia Basin Trust, then the Columbia River Treaty Committee, to include a third party to proceed with Waneta.

What has changed between what has been a very productive and positive relationship between CPC and CBT — the Columbia Power Corporation and the Columbia Basin Trust — to lead us to a point where a very good project with minimal environmental impacts and enormous environmental benefits is now involving a third party? What happened to that partnership? Is it fraying for some reason that the minister can advise me about?

Hon. B. Lekstrom: Just, I guess, to clear the record, I certainly know the Peace Valley very well, I'll let the member know. But any time you can use a river system for the benefit of British Columbians in an environmentally responsible manner, I think that's a good thing, Member.

The issue of the Waneta expansion — we continue to work on that. You asked about it, I know, during our last estimates. I raised the issue of Fortis. I know, for both CBT and CPC, when they looked at it originally, it was not a cost-effective opportunity for them.

I know that the member opposite talks about — and he probably will discuss it on an ongoing basis — the price of electricity in British Columbia. I have always said — and I will not change my view — that I'm not prepared to buy electricity at any price. I think it's important to note that if we're going to do this, we want to do it in a cost-effective manner — one that benefits the people of British Columbia.

The thought of both energy and capacity.... The member knows well that capacity holds a value. When both Columbia Power Corp and the Columbia Basin Trust went out and looked for a third party or a partnership, Fortis came to the table, and they continue to negotiate. We are shovel-ready with this project. We have a contractor ready to go. I'm optimistic that we're going to see this project proceed, but there's still some work to do.

J. Horgan: Let's go over this again. We have an independent power project process, a clean energy call that we discussed at some length yesterday. We have Liberal funders putting in to a call that's overseen by Liberal funders, and on the other side of the coin, we have a public company, the Columbia Power Corporation, owned by the people of British Columbia.

We have the Columbia Basin Trust, an organization owned and operated by the people of the region. They have a project that was mandated 15 years ago as one of three projects that led to a half a billion dollars of provincial revenue flowing to the region — net benefit for the province, net benefit for the region.

We have a project that the minister alleges is shovel-ready, that will provide energy, capacity — firm energy, 365 days a year through an entitlement — no impact on hydrology, no impact on fish.

[1020]

That project languishes, and we have four wind projects approved that are proposed by a company that, aside from giving money to the B.C. Liberals, appears to have no expertise whatsoever in the area that they're purporting to. In addition to not having any expertise in that area, the power that they may produce will be interruptible. It will need to be shaped and firmed by B.C. Hydro at a cost to the people of British Columbia.

Those projects proceed with much fanfare. The good project — the green project, the one that is supported by two public entities — languishes. What does Fortis have to do with that? There was an agreement between the province of British Columbia and the people of the region to proceed with three projects.

The third project has been delayed for four years. What is the rationale for that delay? It can't be the economics, based on those projects that have been approved, so it has to be something else. What is it?

Hon. B. Lekstrom: I'm going to answer a number of questions here that the member has put forward, but let's start with the issue of why this project would not proceed with just Columbia Basin Trust and the Columbia Power Corporation.

The member refers to: "It's mandated. They must do this." Not at any cost, Member — absolutely not at any cost. Let's be clear on that.

I'm sure that the member has done his homework — possibly not — but Columbia Basin Trust and the Columbia Power Corporation were not prepared to move on this project by themselves. It was uneconomical. It made no sense.

They needed to go out, so they were being innovative and thinking outside the box. They went out and sought a third party, entered negotiations — and those negotiations continue — to try and make this project a reality for the people of British Columbia and for everyone. I think it's a good project. I'm confident.

We're going to eat some time up here, and I know that time is tight for him, but when the member relates back that: "Gee, we entered into a contract with Finavera, and the implication is that you've got people reviewing clean energy projects and over-viewing them by people that donated to the Liberal Party..." Not true, Member. They don't have that. They do the evaluation, and the projects

are chosen by the administration, the management staff of B.C. Hydro and then approved by the board. I want to be very clear on that.

But I am going to take the opportunity, because he's referring to Deloitte and Touche as one.... I'm going to read again from a document that was a very important report: *Report on Export Trade*, dated June 30, 2000, under the New Democrat government.

[1025]

Under it, on page 5, I want to read this into the record for clarification: "In early 1997 B.C. Hydro engaged the consulting firm of Deloitte and Touche as part of a two-year project to enhance its risk management capability." It's a very formidable organization. The men and women that work there, I think, do a tremendous job. I think that they know their professional conduct and code. They do it without question. For the member to question that, I think he's a little off track.

If we want to discuss the issue of Waneta expansion, I'm happy to do that. But this is a good project. I'm optimistic, but let's be clear. If what the member is saying.... Unless the Columbia Power Corporation and the Columbia Basin Trust do this project by themselves, let me tell the member today: it won't happen.

J. Horgan: I didn't understand the last point. I believe the minister said that if the trust and CPC can't do it together, it won't happen.

Hon. B. Lekstrom: By themselves.

J. Horgan: By themselves. So then, if that's the case, what role is Fortis playing? Is it as a purchaser of electricity or as an equity partner? What does the minister foresee, with his staff with him, as Fortis's role in this?

Hon. B. Lekstrom: As I said earlier, I want to be very clear. The Columbia Basin Trust and the Columbia Power Corporation looked at this project. They looked at it very intently. It wasn't economical for them to do it, so what they did is, in order to try to pursue the development of this project, they became innovative.

They went out and began speaking to third parties. They're in discussion with Fortis, a publicly traded company. I'm not prepared to divulge the negotiations in estimates, but certainly, should they receive a favourable conclusion — and I'm an optimist, as I said yesterday, and I believe they will — that will become clear then.

J. Horgan: When CPC participated in the clean power call, was any benefit accrued to the proposal based on the availability of capacity or on the fact that there were no hydrological impacts from the projects? Were those factors given any weight in terms of comparing CPC to Finavera or to any of the other companies that were successful?

[1030]

Hon. B. Lekstrom: Just to be clear for the member, CPC did not participate in the clean call as you indicated in your question. Actually, they had bilateral discussions with B.C. Hydro. Was capacity taken into account? Yes, capacity as well as everything else.

But the reason that this project is the last or the third is, obviously, because it is the largest and most complex project. The member, in one of his questions.... This is really freshet energy, where most of it comes from in the spring. It's something that I wanted to clarify for the member. I know that you'd mentioned in one of your earlier questions something to the contrary.

J. Horgan: Well, there's a dam, there's storage and there's an entitlement as part of the Canal plant agreement. So to compare freshet Plutonic power to energy that could be realized from Waneta is just wrong. I don't know why you would make that statement. I could stand to be corrected by the two energy experts behind you, but perhaps not.

So we've had four years since the virtual completion of Brilliant. What activities...? Beyond trying to get this off the ground, what steps have been taken to sharpen some pencils? I know that the energy output has been reduced. We have an EPA, I believe. So you've got an EPA in hand. You've got a managed river.

What's the problem? Is it perhaps the staff? I know that we're short a CEO, and I believe that the CFO is recently departed or is planning to depart. What is the status of the management team?

[1035]

Hon. B. Lekstrom: A number of things. Certainly, if the member wonders why I make some of the statements I do, I think I would have to say that I would think the same about the member — with all due respect, of course, Member. We do have an active search ongoing today for a CEO. We have an acting CEO, Mr. Gerry Duffy, who is operating and doing a very good job for us.

The member did mention that there's an EPA in place. There is no EPA, Member. I just want to make sure, certainly, for your information and the information of the others watching.

I talked about the issue of freshet. The majority of the generation is in May, June and July for this. The reason for that is, obviously, that there is limited storage on the Pend d'Oreille system. So that's the reason.

J. Horgan: Well, I understand that there would be benefits upstream to Hydro facilities if the expansion was completed. I don't know if that was calculated into Hydro's negotiations, but I'd like to see if you can answer the question about the CFO. What's the state of play of that member of the executive? And perhaps you could inventory the individuals that currently make up the executive of Columbia Power Corporation.

Hon. B. Lekstrom: We also, obviously, are in the process of searching for a new CFO. We presently have retained a person in that position to help us out. The management structure, as the member has inquired, is on the Internet under the Columbia Power Corporation. I would encourage the member to have a look there. I think he will get what he needs there.

But as well, I want to point out that I think we have a very solid management team at Columbia Power Corporation. There are two senior VPs who have been there since the inception of this corporation, and I think the men and women that work there do a tremendous job, as do all public servants in this province.

J. Horgan: I certainly wasn't casting aspersions on the management team; I was just wondering who they were. I would have thought that with the board chair and a senior member of the team available, we could have a list for those who may not have access to the Internet. I know that broadband access is difficult in parts of my constituency just a few miles out of Victoria. But if the minister wants the public to go looking for those names, I suppose that's just fine.

[1040]

I would also like to know, going back to the Canal plant agreement, what discussions have taken place between Columbia Power and B.C. Hydro with respect to the Canal plant agreement and any role the Waneta expansion may play in that.

Hon. B. Lekstrom: CPC and B.C. Hydro are certainly in discussions regarding the Canal plant agreement, so it does come into play as well. The member asked that, but when you asked the previous question about the executive, certainly, you implied that the public would like to know.

I have not had the opportunity to have a phone call or request from anybody, but I thought the member was asking. It's unfortunate that his research staff didn't help him gain this, but for that reason I will read into the record: Victor Jmaeff, who is the VP of sales and development, has been there since the beginning; Giulio Ambrosone, who is the VP of projects and operations. We have Debbie Martin, who is the VP of human resources and corporate services, as well as David de Git, who is the director of finance.

J. Horgan: So is David de Git the acting CFO? You made reference to someone in that position. Is that who it is?

Hon. B. Lekstrom: He's not acting in that position. He's certainly assisting. We have also retained additional help while we continue to do the search for a CFO.

J. Horgan: What additional help has been retained?

Hon. B. Lekstrom: We're in the process of retaining that right now while we actually go into the full search for a CFO for Columbia Power Corp.

J. Horgan: We have an acting CEO, who I believe is a board member for some 12 months or so. We have no CFO. We have a VP of human resources, but the only remaining project in the inventory for the company is in abeyance. CPC was created in the early '90s to hold the expansion rights from Brilliant and Waneta as part of a restructuring of smelting operations at Teck Cominco. That was why it was created.

[1045]

It then morphed into a company to achieve three outcomes: a successful project at Keenleyside, a successful project at the Brilliant expansion and, lastly, the Waneta expansion. Now we have a vice-president of human resources but no CEO, no CFO, and Victor — who came from the region and who understands electricity very, very well — seems to me to be the lone person standing that's actually focused on achieving the end result of completing the Waneta expansion.

Can the minister advise what role and function the vice-president of human resources plays in a company that has one project left to do, that's not going anywhere?

Hon. B. Lekstrom: Again, I want to make sure for the many public watching and for the member.... He inferred that this project is in abeyance. Actually, that's not true, Member. This is in active negotiations right now. We are hopeful that this can happen.

He also mentioned Victor. I think he's a very talented individual, someone that works hard on our behalf. But I will also take the opportunity to say that each and every member that works at the Columbia Power Corporation and serves the people are all committed to ensuring that the Waneta expansion project, if it is economical and can be done in a way that benefits British Columbians, will be done, and they're working towards that end.

J. Horgan: What role and purpose is there for a senior vice-president of human resources?

Hon. B. Lekstrom: The member referred to the human resources and corporate services as a senior VP. It's a VP. I just want to make sure that we get that right.

I will read out that our VP of human resources and corporate services — a very important connotation there — looks after human resources management, facilities management, payroll, benefits administration, information technology, procurement and records management. I think that an organization of this or other magnitudes needs this type of position in there, and I think that the individual that serves in this position serves us well.

J. Horgan: Well, I'm hopeful that the records management component is being beefed up, because I made a freedom-of-information request on the Waneta purchase a year ago and received no documents.

A month later I received a package of documents from B.C. Hydro that contained documents from the Columbia Power Corporation, so we do have some work to do in that regard, and perhaps that would be an area that we could focus on.

Recruitment might also be something that we could look at, with no CEO and no CFO. But I'm wondering: when Mr. Chuddy departed the Columbia Power Corporation, was there severance paid?

Hon. B. Lekstrom: No, there was no severance.

[1050]

J. Horgan: In the discussions that the minister alluded to with Fortis, is it contemplated that any end result of that would still see the Columbia Power Corporation and the Columbia Basin Trust as equal partners — 50-50?

Hon. B. Lekstrom: There will be a partnership, but the negotiations, as I said earlier, are ongoing. I don't want to prejudice those negotiations. But to be sure, there is a partnership here, and the discussions are ongoing.

J. Horgan: When the partnership was initially created, with the Columbia Basin accord back in the 1990s, it was contemplated that it would be an equal share of 50-50, and significant funds were sent to the Columbia Basin Trust to achieve those outcomes. Has the minister, in consultation with anyone else in the province of British Columbia, contemplated the prospect of taking back money from either of these entities if they don't fulfil their 50-50 partnership agreement from the 1990s?

Hon. B. Lekstrom: Has there been discussion that the province would claw money back from them? No, there hasn't been.

J. Horgan: Again, I appreciate that the minister doesn't want to prejudice the negotiations, but I want to go back to the original point and the original intention of the accord, the creation of CPC and the creation of the CBT.

A significant amount of money was allocated to achieve the objective of three hydroelectric projects in the Columbia Basin. The benefits that would flow from the realization of those would be jobs, of course. They were staggered and staged so that skills and training could happen over the course of the development of those three projects. A lot of money — in the half a billion dollar range — was set aside to achieve that result.

The intent was that there would be equal partners, not subservient partners. A lot of tussling went back and forth. Certainly, one of your staff members can remember, being there for a good period of time, tussling back and forth between the two entities. My concern is that CBT, the Columbia Basin Trust, is less enthusiastic about proceeding with Waneta than CPC. And in fact, Fortis may well be being brought into the picture to pick up a share that CBT should be participating in.

A lot of money went towards these three projects. Not two projects, three projects. And if CPC is going to be a 50 percent partner and Fortis and CBT are jointly 50 percent, I have a concern about that, and I would hope that the minister does. Could he have a comment on that?

[1055]

Hon. B. Lekstrom: I'm not sure whether the member is hearing something different, but I want to make it very clear that both the Columbia Power Corporation and the Columbia Basin Trust are fully participating and supportive of the ongoing negotiations that are going on today.

I mentioned earlier, and I think the member is well aware, that as the Columbia Power Corporation and the Columbia Basin Trust looked at this project to develop this project, they found it was uneconomical. They could not do it in an economically viable way. They wanted this project to proceed, for the benefit — as the member, I think, has mentioned a couple of times — of British Columbians and for the opportunity for jobs for people in the region, something very important I know to the people of that region particularly.

The project would not have happened without the ability to be innovative, to go outside and.... You know, this is still a commercial negotiation that's ongoing. I'm going to let that negotiation take its due course, and at the end of that negotiation I'm optimistic that we will, hopefully, see the expansion of Waneta take place.

J. Horgan: You have equal partners — Columbia Basin Trust and Columbia Power Corporation — Columbia Power Corporation having access to advantageous borrowing as a result of its relationship with the province of British Columbia, and Columbia Basin Trust with assets worth significant amounts of money now.

If, as the minister suggests, the project was not economic with those two partners, I'm curious how the participation of Fortis, which I imagine cannot borrow at the same competitive rates that CBT and CPC can, is going to somehow miraculously make the cost of cement go down, make the cost of labour go down, make the cost of borrowing go down. Can the minister explain that to me?

Hon. B. Lekstrom: I know that the member has asked this question a number of different ways and through a

number of different attempts, but I can't be any clearer. This negotiation is ongoing, and I'm not prepared to enter into a discussion about a commercial negotiation that is ongoing between the Columbia Power Corporation, the Columbia Basin Trust and Fortis.

Again I want to go back to the point that CBT and CPC are fully, fully supportive of the direction that this is taking in order to try to ensure that the Waneta expansion project proceeds.

J. Horgan: Well, again, I know that in my business life more partners means more complications; fewer partners, fewer complications. If you're seeking a third party to assist when you have two equal partners, there needs to be an assumption made, I guess, for those who are paying attention at home, that that third party is going to bring something to the table that the other two don't have.

[1100]

So I'm wondering if the minister, theoretically, outside of the scenario that he's been describing, could explain to me how a private company that doesn't have access to capital at the same advantageous rates as one of the partners, that doesn't bring anything to the table that the two parties don't already have is going to shift the balance and make it a viable project.

Hon. B. Lekstrom: I think that you almost answered your question in itself. Obviously, they are bringing something to the table to bring value. I know that the member asked what, and I have told him that that is part of the negotiations. When they're completed, it will, obviously, become evident. I'm hopeful that it will be completed soon.

But let's be clear. I'm not sure that this is what the member is saying, but he should possibly clear this up. I think what he's saying is that unless the Columbia Power Corporation and the Columbia Basin Trust do this project themselves, it shouldn't proceed. We differ. They actually did their work, looked at this project and wanted it to work. It wasn't economical.

They went out, were very innovative and sought third-party opportunities. They're now in those discussions, which very well may make this project a reality. I know the people of the region. I certainly don't think that they would oppose the development of this project — creating jobs, creating benefits for British Columbians and cost-effective power. But I would let the member speak for himself on that.

The Chair: Member, just before we begin, I will caution you. You're sort of on the verge of repetition here.

J. Horgan: Hon. Chair, I appreciate that reminder. Josh Smienk, former chair of the Columbia Basin Trust and a former Liberal candidate, mused at a public

meeting in East Kootenay that while he was chair of the trust, he didn't believe that it was in their interest to proceed with the third project.

This is the genesis of my concern about the enthusiasm of the Columbia Basin Trust. If the minister is telling me that CBT is a 50 percent partner in this project, I'll take him at his word. But if you've got a third party, someone is going to be giving away a share. If it's going to be one-third, one-third, one-third, I suppose we'll have to see.

My understanding, my information, is that CBT is less interested than they should be. My concern is that agreements were reached in the 1990s. A process was laid out. If the projects were viable, they would proceed.

I believe that there is some problem — internal, not with the economics. I've outlined for the minister the benefits of this project that are superior to other projects that have been approved by government through the Clean Call, through the 2006 IPP process, that don't come close to providing the overall benefits to B.C. Hydro, to the people in the region and to the province. I'll leave it at that, and we'll move on to complete discussions with our friends from B.C. Hydro.

I want to thank the minister for the documents he provided this morning. I received *Invitation for Proposals for Independent Observer for Clean Power Call*, and I received *Request for Proposals for Consulting Services*, which are to be sent to Accenture Business Services, 401 West Georgia. Also, another request for proposals for consulting services that I think could have been found on B.C. Bid.

I was hopeful in requesting this information that the minister would provide the list of participants in this process, and we would go from there. While we get the B.C. Hydro folks back in play, I would like to say that these documents are a little bit short of what I was looking for. But I would wonder if the minister could advise me what the successful bidders have been paid from the time of the issue to today.

[1105]

Hon. B. Lekstrom: Just a couple of quick points. I know that the member made some comments about Mr. Smienk musing, I think is how he put it, about this project. Mr. Smienk, I think, was referring.... It's fair to say — and I've reiterated this a number of times — that when both the Columbia Basin Trust and the Columbia Power Corporation were looking at this project together and looking at what the opportunity was, it wasn't economic.

At that point the boards and the organizations felt that they wanted this project to work, if at all possible. They went outside. They looked for a partner. They actually are in discussions today with that partner, and I'm confident that they will be able to reach an agreement, or I'm

hopeful that they can. So I don't think we want to twist anything here.

I want to clear the record. The member said: "If the minister is saying that they will be 50-50 partners...." There are ongoing negotiations. I can't say that. I never did say that, so I wanted to clear that up. The information that we have given the member.... We concluded estimates last night at 7 p.m. I committed to get him what information we could by this morning.

It's a \$3 billion corporation. I have a number of binders — a four-inch one that tries to cover all of the information, or as much as we possibly can. But I think it's fair to say that a \$3 billion corporation sometimes is going to have to delve into its records as well. We committed to get you that information, and we will.

J. Horgan: I'm wondering. I have had discussions with the minister in the past about the Dokie project in his constituency. It's a wind project that fell into bankruptcy receivership and was taken over by another proponent in the process of taking over the Dokie project.

I'm advised that the energy purchasing agreement was amended, and the minister had undertaken in the past to provide that information. I'm wondering if he could do so now. What amendments were made to the Dokie EPA when it transited from the original proponent to the current proponent?

[1110]

Hon. B. Lekstrom: There were several amendments made, all of which gave B.C. Hydro increased benefits. They were filed with the BCUC. In their evaluation BCUC made the ultimate determination that this was in the interest of British Columbians, but the individual amendments to that are commercially sensitive, as the member would well know, I believe.

J. Horgan: Could the minister advise what the status of the project is? Is it under construction? If so, are the people working on site from Canada, or are they from Chicago?

Hon. B. Lekstrom: It is under development right now, as we speak. There are people from the local communities as well as outside of the local communities working on this project. I know some myself, Member.

J. Horgan: How far afield did we go to seek human resources on this project? Did we go, say, to Chicago?

Hon. B. Lekstrom: I know that the member thinks I have a great deal of power out there but, unfortunately, maybe not as much as he thinks. The proponent would be responsible for who they contract with and where they go to seek the expertise or the equipment they need. I am aware that there are locals working on the project

as well as people from out of area. That could probably be out of province, out of country.

J. Horgan: I know that as minister you may well not have the hands on, on this file as others would, but as the local MLA.... And I'm not asking you a question — hon. Chair, before you correct me — as the local MLA. I'm saying that if you were, you would probably be more interested in the percentage of local procurement versus procurement from outside of the region.

I'm wondering if the minister, with his staff available, has any sense, in terms of the job creation, how many direct jobs are resulting from this, and of those direct jobs, how many would be from the region?

Hon. B. Lekstrom: Well, as the minister responsible — and happily residing in that area, as well — I can tell the member that I am very interested in the local-hire issue. We've always been very proud of the work that we can provide as British Columbians. I don't get too many British Columbians saying: "I should be given work at any cost."

The British Columbians, actually, that I know and the companies that I'm aware of, whether it be in my region or in this province, ask that they be given opportunity. They will compete financially and quality-of-work-wise with anybody.

To sum it up, either the MLA or the minister — who both happen to reside in this riding in the form of one individual, which is me — is obviously always ensuring the best interests of the people that I represent, as the member does himself, I'm sure.

Again, I am not the contractor. I am not the proponent. I don't hire the individuals for this project, but we always.... I can tell you that the people — we're speaking about the Peace region — provide a great level of service at a very economic price and will compete with anybody, not just in British Columbia but around the world.

J. Horgan: Could the minister identify the direct jobs that are flowing from the Dokie project?

Hon. B. Lekstrom: I'm not sure if I wasn't clear. The proponent does that. So no, I don't have a list. The proponent has not sent me a list, either as the minister or as the MLA in the region, to say: "Here's who we hired, and here's their home address."

J. Horgan: No, I'm off where they come from. I realize that the minister is aware that many of the people working on the project come from somewhere else.

I am wondering if the proponent, in the course of proceeding with the project and interacting with the eventual buyer, has given a job number. How many jobs will be created during the construction phase of the project? That's the question.

If the minister doesn't have that, then that's fine. But I would think that in the process of proceeding with independent power projects, there would be not just the benefit of any electricity that may flow from that but also the job creation benefits. I certainly would want to trumpet that if it were me.

[1115]

Hon. B. Lekstrom: On this particular project, no, I don't have a breakdown of the numbers or who's working there. I think the member is probably aware that PricewaterhouseCoopers did a report on IPP job creation, what they would mean — the creation of thousands of jobs. But I go back to the point. The people holding those jobs, as I said, are contractors and certainly want to compete with anybody out there both price-wise and quality-of-work-wise.

I'm extremely confident that the men and women in the service sector and the different companies that work in this province can do that. If they receive and bid on a job and are successful, I think they're extremely happy. If they don't, I'm sure they go back, sharpen their pencil and find out what they can do to secure the contract next time.

V. Huntington: I'd just like to ask the minister a series of questions yet again about the Tsawwassen transmission lines. I'll ask a number of point-form questions, and I'd be pleased to receive the written answers at a later date because they will require a lot of toing and froing. Then I'll follow up with two or three other questions for the minister. I'll just read these out, and your staff can respond from the record, if that's all right.

A few weeks ago, as the minister knows, the estimated cost at that time for the home purchases and the transmission line installation was at \$81 million. I'd like to know what that cost is today, what the total costs to Hydro are to date. I'd like that broken down into the cost of the purchasing of the homes, the security costs, the renovation costs and the landscaping costs.

I'd like to know how many homes have been sold to date, whether any of those are being leased by the original occupants under some agreement, whether any of them are being rented or leased by Hydro instead of being sold or in lieu of being sold.

I'd like to know what the average price of those home sales are and whether or not I can receive a list of the sales, probably with no attribution. That would probably be the reasonable request. If I could receive a list of the sale prices, I would appreciate it. I'd like to know what time Hydro is estimating before all sales are complete.

I'd like to know what the total projected carrying costs are anticipated to be by the time the sales are complete; i.e., the total cost was \$81 million a few weeks ago. What do you estimate it will be by the time all sales are complete?

[1120]

I'd like to know which company has the contract to sell the homes — is it a new firm, or is it a subsidiary of an existing firm? — and, if possible, if the contract between that company or Hydro or the government is available. I'd like to know what the final cost of the transmission line replacement was and the estimated cost of burying the lines, both shielded and unshielded, which was the offer to the residents of Tsawwassen.

Just to ensure that those questions are understood, and then I can go on to my others.

Hon. B. Lekstrom: Thank you for the questions. As you indicated, we will endeavour to get you all of the information you have just requested in a timely manner and in writing. We will get that back to you. If you have further questions, we'll then proceed at this point.

V. Huntington: None will take much time. Part of the directive from cabinet was a direction that Hydro was able to recoup any losses on the project — i.e., the purchases of the homes and the carrying costs. I'd like to know when Hydro anticipates recouping its losses and over what period. And once the costs have been recouped, will the rate come down?

Hon. B. Lekstrom: The time frame that we had set out for this was three years. We're roughly a year into it, or a full year. It certainly looks like we're just slightly ahead of schedule. Again, that will be encompassed in the information we get to you. So two more years.

Obviously, housing markets will dictate what takes place there — the value we get for it. The member did mention \$81 million, I believe. If \$58 million of that was the purchase amount of the homes, \$23 million is really what we're talking about here. That was the projected possible loss that may take place. At the end of the selling of the homes, which is about two more years, B.C. Hydro would file with the commission to recover what that loss would be, if any.

V. Huntington: I'm assuming Hydro has an idea, a projection, for what that cost will be. Will that be attached to residential rates only, or will it be spread through residential and industrial users?

Hon. B. Lekstrom: Should there be a loss on the projected \$23 million, it would be applied across all rate bases.

V. Huntington: That comes as a bit of a surprise, but a welcome one, I'm sure, for the residents of British Columbia, who will have to assume the cost of this boondoggle.

[1125]

The member for Delta North posed a very interesting question to me and suggested I ask what the.... During the process of the transmission line discussions, the

BCUC, the B.C. Utilities Commission, played a very large role in hearing from the public and from the different proponents and opponents of the project.

Given the changes that fall within the Clean Energy Act, what role would BCUC have in any other future transmission line improvements or proposals throughout British Columbia, particularly in heavily populated areas?

Hon. B. Lekstrom: Just a quick one. I certainly would disagree with the member, respectfully. This isn't a boondoggle. I think that the public, you know.... They put something on that was there to help the public and the affected individuals.

But Madam Chair, I'm going to look to you. The question that the member has asked is probably best asked in the Legislature, under the Clean Energy Act.

If that would be possible, I would encourage you to do that. We're doing estimates, and I know we have to be somewhat careful under protocol that if there's a piece of legislation before the House, we discuss that there.

The Chair: Point well taken, Minister.

V. Huntington: I assumed that that would be the answer, but I felt compelled to try the question. It will be asked again, I can assure you.

I have to say that I cannot believe the answer the minister gave about it not being a boondoggle. What is it? A \$23 million loss to date on an issue that could have been resolved by burying the lines in the first place for a smaller price than you've paid to date? That is, I think, a financial, political, policy and management disaster of fairly large proportion, so I take exception to the minister's answer.

I guess, then, my final question would be whether the minister would contemplate ever having his government consider apologizing to the people of Tsawwassen and to British Columbia for this disaster and the expense that it has cost all of us, which we're all going to end up paying for because of a decision not to bury lines when they could far more easily have been buried and cost the public far less money.

[1130]

Hon. B. Lekstrom: We're going to agree to disagree on whether this was a favourable move or not. I think that's fair to say, but I do want to point out that the member indicated the loss to date. There has been no loss to date, Member.

As I said, the purchase price of the homes — \$58 million.... There's the possibility that there could be a \$23 million cost. We won't know that until all of the homes are sold, and at that time the potential could be a break-even, depending on what takes place with the market. Who knows? There could be a benefit, actually, in revenue to that.

But I do want to point out — you talked about the underground — that the original proposal was to go underground. The group, actually, in Tsawwassen that was following this opposed both underground and overhead. It went before the B.C. Utilities Commission. The information that the B.C. Utilities Commission reviewed.... They made the determination that overhead was the way they were going to go. So the answer to the question, "Would government apologize?" is: no, I would see no reason to do that.

V. Huntington: From everything I have learned.... I certainly don't want to get into a to-and-fro on this, but the issue for the residents was that the offer to go underground was unshielded, and there was so little difference between an unshielded undergrounding versus the transmission lines that they decided to fight.

Now, we can go back and forth. That's my information. Yours is probably otherwise.

The loss I'm referring to is the very fact that because they weren't put underground in the first place, you have a huge additional cost at this point for the purchases of those homes, which could have been avoided. What the final loss to the province or to B.C. Hydro will be, at the end, is what I'm very interested in finding out at some point.

I think the fact that there will be no loss at the end of the day because they can recoup it from the people of British Columbia through their hydro rates is a sad situation for the people of the province.

But with that, I will leave the situation. I look forward to the answers that your staff will provide, and I wonder if I could have an idea of when I might expect those answers.

Hon. B. Lekstrom: Just a couple of things. The information that the member's requested.... We will endeavour to do that as quickly as possible. I know that they will do that, but I do want to close with this. Again, with all due respect to the member, we do not see this issue the same way. We were prepared to go underground. The shielded cable that the member refers to was over twice as expensive with no net benefit. That was the issue.

J. Horgan: In the very brief time that we have available to run the clock to lunch, I'd like to ask a few questions about the Transmission Corporation. In particular, could the minister advise what analysis, what studies, were done to estimate the cost of rolling out the B.C. Transmission Corporation?

[1135]

Hon. B. Lekstrom: I'll just maybe introduce a couple of people who have joined us for these estimates: Janet Woodruff, who's the interim president of BCTC, as well as Bruce Barrett, who's the vice-president for major projects.

As the member well knows, I think, it was fair to say that there was certainly a felt necessity to separate these two companies, B.C. Hydro and BCTC, in order to maintain our ability to trade power south of the border — something that goes back many, many years — through the requirements under the Federal Energy Regulatory Commission. Those did not prove out, Member. It's fair to say, as these companies are rolled back together, that through the synergies we expect significant savings.

J. Horgan: Has the minister or his staff viewed the cost of having two separate entities over the past nine years and what savings would have accrued had they not been separated?

Hon. B. Lekstrom: Just a quick clarification. It wasn't nine years. It's been six years. I want to make that clear. But no, we don't have that cost, Member.

What we weren't prepared to do was give up hundreds of millions of dollars in revenue that government receives through the trading of electricity, and that goes back to the benefit of the ratepayers and the taxpayers of this province.

It's clear that, as we have progressed in time, the requirement to have those entities separated — both generation and transmission that we talk about — has proved not to be needed. Again, we believe that putting these back together.... I know we're going to have further discussion on the floor of the Legislature, I would expect, on this issue, as it is part of the Clean Energy Act.

J. Horgan: So we had a decision six years ago.... As the minister said, it was 12 months ago last night when it was six, and now I'm adding years on. This happens to us as we advance in age, I suspect.

Six years ago a decision was made to separate transmission from generation. It was also at a time when the privatization of one-third of the office staff at B.C. Hydro was coming to fruition, so there was a major tremor in what had been a fully integrated utility.

Now, six years later, steps are being taken to reintegrate portions of the utility. During that time significant amounts of money were expended. I'm wondering.... The minister is quite right that the decisions in the United States — FERC is a U.S. body — led to the decision to proceed, but it appears now to be a colossal waste of money. Does the minister believe that someone should be accountable for that? Or should we just say: "Oh well, tough luck"?

[1140]

Hon. B. Lekstrom: Well, it was clear that 20-20 hindsight, obviously, is something that we could utilize — I think many of us, time to time.

I want to go back to the fact that when this requirement was felt to be needed because of the Federal Energy Regulatory Commission, we weren't prepared to take the risk of not being able to continue to trade our electricity with the United States — something that has returned, on average, about \$150 million a year over the last six years.

The fact is that had we not made this decision and it went the other way, we had the potential to lose a significant amount of money. A decision was made, and we maintained our ability to trade. The decision, as it was made.... It is now found out that it is not necessary.

We're rolling BCTC back under B.C. Hydro. It's something that I think is necessary and needed and prudent to do. Again, we'll secure the future of B.C. Hydro — I think one of the finest Crown corporations in the world — and maintain our ability to trade not just with the United States but to look to the east of us — with Alberta and Saskatchewan, for example, as well.

J. Horgan: Let's look east. Let's look to Quebec, which faced the same scenario that we did in 2003. They didn't disaggregate a very effective public utility. They proceeded on, and benefits have accrued to them, whereas we are now looking at liabilities as a result of a B.C. Liberal decision in 2003.

I am pleased, however, that the minister did say that over the past six years we have been exporting electricity to the United States to the benefit of all British Columbians, which I think puts in doubt the position that I often hear from B.C. Liberals — that we are net importers of electricity.

If we are continuing to sell power to the United States to the benefit of all British Columbians, I'm delighted. I'm pleased with that. That tells me that we had surplus electricity. We weren't putting at risk existing ratepayers to make that profit for the people of British Columbia, so I tip my cap to the minister for acknowledging that.

I'd like to move on to the northeast transmission line just for a moment, because it isn't included in the bill that we're not allowed to talk about in this place. That's a curiosity to me, because in the throne speech.... I'll read from it. It's riveting prose, and I do like literature. It says:

"New transmission infrastructure will link northeastern British Columbia to our integrated grid, provide clean power to the energy industry and open up new capacity for clean power exports to Alberta, Saskatchewan and south of the border.

"We will seek major transmission upgrades with utilities in California and elsewhere.

"If we act with clear vision and concerted effort now, in 2030 people will look back to this decade as we look back to the 1960s today."

Of course, looking back to the 1960s is loaded for many people in this room. It certainly is for me. I think the intent there of the writer of the throne speech was

some mythological period where electricity development was without complication or conflict.

Of course, the minister knows that anytime you do something, there are people that will be unhappy. I'm wondering if he could explain to me what the status is of the mythical northeast transmission grid and who is going to pay for it.

[1145]

Hon. B. Lekstrom: Just a couple of things. The northeast transmission line.... Right now Fort Nelson is served by a natural gas system. We've made a commitment. I think it's fair to say that we are trying to reduce the greenhouse gas emissions in this province. We are doing a number of things.

Obviously, if we could put them on the grid with the clean, green electricity that we produce in this province, I think it would be worthwhile not only for the community of Fort Nelson but primarily.... I think a clear focus here is that we expand the Horn River basin, a very significant natural gas play not only in British Columbia but in North America. The ability to electrify that play cuts down emissions. We're in the very early stages of discussions to see if that project can be viable, and we continue on that.

I do want to point out that the member was extremely happy with my previous answer. I'm going to hope that he's extremely happy with this one. He talked about net importers. I know that the member knows this, and we're doing our jobs here, but the reality is that British Columbia does not produce the needed power here to meet our own demands. If we were to not import or export a single gigawatt hour starting tomorrow, we would be short of meeting our own demands.

I want to take the opportunity to read into the record a number of years here, starting in 2001. We actually imported 1,993 gigawatt hours that we purchased; 5,238 gigawatt hours in 2002. In 2003 we imported 1,754 gigawatt hours. We had to purchase 5,118 gigawatt hours in 2004; 7,381 gigawatt hours in 2005; in 2006, 4,352 gigawatt hours. In 2007 we had to purchase 6,141 gigawatt hours. In 2008 we actually had an excess of 1,171 gigawatt hours, a high-water year.

The member, I know, knows how this works. In 2009 we had to import 4,602 gigawatt hours. This year is not looking good with the low-water year and the low snow-pack. There is an estimate that we may have to import or purchase as much as 3,262 gigawatt hours.

Let's be clear. I know that there seems to be a lot of — how do I say this? — game-playing, to be honest, with numbers, thinking that British Columbia is more than meeting its own need today, when in fact it isn't. That is a commitment we've made as a government — that we will once again be electricity self-sufficient in this province by 2016. We think that we have that ability.

We also, I know, are going to have a full discussion on what our potential is to not only to meet our demand, reduce our greenhouse gases and continue to create clean, green electricity in this province but also to help others clean their environment.

J. Horgan: Again, we imported power because it was advantageous to do so. If the minister and his government had an understanding of how the utility has functioned ably and capably for generations, they would not be following this notion of somehow having self-sufficiency in electrons. It's absurd.

Certainly, the people sitting behind the minister know that. Sadly, they're not able to speak the truth to power, but perhaps they will in the fullness of time.

I want to thank you, hon. Chair, for having had this opportunity. The minister has been very fulsome and forthright. We can carry this on over there, and I know that we will for many, many days.

[1150]

I'm wondering if the minister, because we didn't get an opportunity to speak about mining, would be prepared to accept written questions for himself and the minister of state that would flow into next week or before the House rises, for his consideration and response.

Hon. B. Lekstrom: Just before I answer the final question, I will let the member know.... To think that I'm not truthful.... I certainly took that, and I hope that he didn't mean that. I would take great exception. It's interesting to note. Member, the truth will set you free. I encourage that to happen.

We would gladly accept written questions regarding the mining portion of our ministry and certainly endeavour and ensure that you get those answers as quickly as possible for you.

The Chair: Hearing no more questions, I'd like to call Vote 28.

Vote 28: ministry operations, \$54,450,000 — approved.

Vote 29: contracts and funding arrangements, \$1,000 — approved.

Hon. B. Lekstrom: I would move the committee rise, report completion without amendment and resolution and ask leave to sit again.

Motion approved.

The committee rose at 11:52 a.m.

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