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*of* BRITISH COLUMBIA

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THE HONOURABLE DARRYL PLECAS, SPEAKER

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LIEUTENANT-GOVERNOR

Her Honour the Honourable Janet Austin, OBC

FOURTH SESSION, 41ST PARLIAMENT

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Honourable Darryl Plecas

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Afternoon Sitting

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TUESDAY, NOVEMBER 26, 2019

The House met at 1:33 p.m.

[Mr. Speaker in the chair.]

### Orders of the Day

**Hon. C. James:** I will call a motion on notice, Nisga'a final agreement amending agreement (No. 4).

### Government Motions on Notice

#### MOTION 24 — AMENDMENTS TO NISGA'A FINAL AGREEMENT

**Hon. S. Fraser:** I move Motion 24 standing in my name on the order paper.

[Be it resolved that, pursuant to section 38 of Chapter 2 of the Nisga'a Final Agreement, the Legislative Assembly of British Columbia consents to the amendments to the Nisga'a Final Agreement set out in the attached Nisga'a Final Agreement Amending Agreement (No. 4).

#### NISGA'A FINAL AGREEMENT AMENDING AGREEMENT (No. 4)

THIS AMENDING AGREEMENT is dated for reference March 31, 2019

AMONG

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Crown-Indigenous Relations**  
("Canada")

AND

**HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as represented by the Minister of Indigenous Relations and Reconciliation**  
("British Columbia")

AND

**The NISGA'A NATION, as represented by the Nisga'a Lisims Government Executive**  
("Nisga'a Nation").

- A. On May 11, 2000 the Nisga'a Final Agreement came into effect.  
B. The Nisga'a Final Agreement provides for its amendment and specifies requirements for amendments of various of its provisions.  
C. The Parties have previously agreed to make certain amendments to the Nisga'a Final Agreement.  
D. The Parties now propose the further amendments to the Nisga'a Final Agreement set out in Part II of this Amending Agreement related to the definition of Nisga'a settlement trust.  
E. The Parties have determined that the processes set out in paragraph 37, 38 and 40 of Chapter 2 – General Provisions apply to the proposed amendments set out in Part II of this Amending Agreement No. 4.

**NOW THEREFORE the Parties agree that the proposed amendments to the Nisga'a Final Agreement set out in Part II of this Amending Agreement No. 4 be recommended**

- a) By the Nisga'a Lisims Government Executive to Wilp Si'ay-uukhl Nisga'a,  
b) By the Minister of Crown-Indigenous Relations to the Governor in Council, and  
c) By the Minister of Indigenous Relations and Reconciliation to the Legislature of British Columbia.

### PART I – DEFINITIONS

1. In this Amending Agreement No. 4:

- a) "Nisga'a Final Agreement" means the Nisga'a Final Agreement among the Nisga'a Nation, Her Majesty The Queen in right of Canada and Her Majesty the Queen in right of British Columbia, as it took effect on May 11, 2000, as amended;  
b) A reference to a Chapter by number or name is a reference to the corresponding chapter number or name in the Nisga'a Final Agreement; and  
c) A reference to a number and paragraph of a Chapter is a reference to the corresponding number and paragraph of the chapter in the Nisga'a Final Agreement.

2. Words and expressions appearing in this Amending Agreement No. 4 that are not defined in this Amending Agreement but are defined in the Nisga'a Final Agreement have the meanings ascribed to them in the Nisga'a Final Agreement.

### PART II – AMENDMENTS

3. The definition of "Nisga'a settlement trust" in paragraph 1 of Chapter 15 of the Nisga'a Final Agreement is amended by deleting "means any trust having the following characteristics" and substituting "at any time means a Nisga'a settlement trust as defined in the Taxation Agreement referred to in paragraph 21 of the Tax Chapter or any trust having the following characteristics".

4. Subparagraph (f) of the definition of "Nisga'a settlement trust" in paragraph 1 of Chapter 15 of the Nisga'a Final Agreement is amended by deleting "Financial Transfers Chapter" and substituting "Capital Transfer and Negotiation Loan Repayment Chapter".

### PART III – PROCEDURES

5. The proposed amendments set out in Part II of this Amending Agreement will take effect in accordance with paragraph 41 of Chapter 2 – General Provisions, on the date that the last Party required to consent to the amendments gives its consent.

6. This Amending Agreement may be signed in one or more counterparts. A signed counterpart may be delivered by one Party to another Party by facsimile transmission and a facsimile so transmitted will constitute an original document. Signed counterparts held by a Party, taken together, will constitute one and the same instrument.

**FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Crown-Indigenous Relations, signed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.**

The Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations

Witnessed by \_\_\_\_\_

**FOR HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as represented by the Minister of Indigenous Relations and Reconciliation, signed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.**

The Honourable Scott Fraser, Minister of Indigenous Relations and Reconciliation

Witnessed by \_\_\_\_\_

**FOR THE NISGA'A NATION, as represented by the Nisga'a Lisims Government Executive, signed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.**

Eva Clayton, President

Witnessed by \_\_\_\_\_]

I rise in this House today to move the amending agreement to the Nisga'a final agreement, British Columbia's first modern-day treaty. The purpose of this agreement is to enable the amendment of two provisions of the final agreement.

[1:35 p.m.]

The first amends the definition of “Nisga’a settlement trust” to enable the settlement trust to also be defined in the taxation agreement. This paves the way for changes to the taxation agreement that will allow the Nisga’a Nation to broaden the scope of investments by the settlement trust.

[R. Chouhan in the chair.]

The second provision corrects a reference error in the fiscal relations chapter that was identified during the negotiations. The amended agreement will enable the Nisga’a Nation to invest in limited partnerships, which are not permitted under the current settlement trust rules.

Changes to federal tax law cleared a path to negotiate these amendments. Canada and the Nisga’a Nation have each ratified the amending agreement. British Columbia is the last signatory that needs to ratify it before the agreement can take effect.

I’ll take this opportunity to congratulate the Nisga’a Nation on its ongoing efforts to create a powerful, sustainable economy that benefits its members with jobs and with opportunities. Our treaty with the Nisga’a Nation is the first modern-day treaty in B.C. history that came into effect in 2000.

I look forward to celebrating with Nisga’a their 20th anniversary next year. The treaty is the foundation for how all other modern treaties have been built as a relationship that can evolve over time, not frozen in time.

Nisga’a demonstrates the power of the modern treaties and why it’s part of my mandate to re-energize treaty negotiations. We have been actively working to renew treaty-making in British Columbia with the federal government, the First Nations Summit and the First Nations in the B.C. treaty process as well as the Alliance of B.C. Modern Treaty Nations. Through this work, we are basing treaty-making on a recognition of the inherent rights of Indigenous peoples and on lasting government-to-government relationships that can evolve over time.

We are modernizing the treaty process to better respect case law and embody the United Nations declaration on the rights of Indigenous peoples. This is part of a commitment to deepen our relationships with First Nations and advance true, lasting reconciliation.

**J. Rustad:** I just have a few words to add to the minister’s comments.

I work closely with the Nisga’a Nation, and this is something that has been done on numerous occasions as changes and stuff go forward. As a matter of fact, I think I remember being on that side and bringing in a motion not long ago. The minister, of course, I believe, was the responder at that time to this.

I actually just want to take a moment just to thank the Nisga’a Nation for the work they’re doing. I know they are working very hard at developing their economy, developing

opportunities for the people and working through. Of course, managing the money and the funds that they have as part of the treaty settlement as well as the works that they have done over the years has been an important piece of advancing their reconciliation and advancing the prosperity that they are hoping to achieve for the people.

With that, these amendments don’t pose anything else in terms of significance that needs to be dealt with within the Legislature, so I’m happy that they’re moving forward. Once again, congratulations to the Nisga’a people on the work they’re doing in their treaty and the advancement they’re doing towards improving lives for their people.

**A. Olsen:** I’m just going to stand and add the voice of the Third Party to this very, very briefly and also raise my hands up to the Nisga’a, whose perseverance, in many respects, has us having the conversation that is happening in many rooms, and specifically one other room in a few minutes once this debate on this motion is complete.

We are having this conversation about reconciliation because of the persistence of communities and nations such as Nisga’a, who have been coming to this place here in the Inner Harbour in Victoria and encouraging government to take action. I think we see here, as we’re making an amendment, this process requires the three parties to pass motions in order for this to come into effect. British Columbia is certainly a part of those agreements. I’m proud to stand here today to enable the work that has been done before us.

[1:40 p.m.]

**Hon. S. Fraser:** I want to thank the member for Nechako Lakes and the member, also, for Saanich North and the Islands — and thank, of course, the Nisga’a people and the Nisga’a Lisims Government. They have been inspiring.

They also brought us together on an issue where partisanship doesn’t exist. The advancement of the Nisga’a people in the region and in this province will benefit all of us, and all of us working together in this House with the Nisga’a government and people, I think, is inspiring too. I thank them for allowing us to come together around this issue.

With that, I thank the members for their cooperation, and I move the motion.

**Deputy Speaker:** Hon. Members, you’ve heard that it has been moved by the Minister of Indigenous Relations and Reconciliation that pursuant to section 38 of chapter 2 of the Nisga’a final agreement, the Legislative Assembly of British Columbia consents to the amendments to the Nisga’a final agreement set out in the Nisga’a final agreement amending agreement No. 4.

Motion approved.

**Hon. C. James:** I move continued second reading of Bill 42, Fuel Price Transparency Act.



## Second Reading of Bills

### BILL 42 — FUEL PRICE TRANSPARENCY ACT (continued)

**R. Kahlon:** It's a pleasure to rise to speak to the Fuel Price Transparency Act.

I'm not going to take very much time, other than to say that people in my constituency and many throughout the region are obviously very frustrated when they see the fuel prices surge the way they do. It's difficult to explain what the reasoning is for the price changes. When they hear that the BCUC still cannot explain why there is a 13-cent difference, after going through all the information that was provided to them, they get even more frustrated.

I'm grateful for the Minister of....

**Deputy Speaker:** Member, would you please take a seat.

**Hon. C. James:** I also want to call, in the Douglas Fir Room, continued Committee of the Whole, Bill 41, Declaration on the Rights of Indigenous Peoples Act.

**R. Kahlon:** Again, I don't expect to be long, for the members that are heading to the Douglas Fir Room. I'm only going to be probably five minutes, but that being said....

As I was saying, constituents in my community are extremely frustrated when they see gas prices rise the way they do and fall the way they do, and it's hard to explain the rationale for why, what's happening. When they hear there's a 13-cent difference between the two, that makes them even more frustrated. So I'm thankful to the Minister of Jobs, Trade and Technology for taking an important step to ensure that there's transparency.

What this bill will do is essentially ensure that these big oil companies are being more transparent on how they come across and how they basically put their fuel prices in place.

We're not the only jurisdiction to do this. Australia and New Zealand have both gone in this direction. Washington state and Oregon state require oil and gas companies to ensure that the information is available.

Once the information becomes available, obviously, privacy and sensitive data.... It will be ensured that that doesn't become public, but it will be available for consumer and watchdog groups so that they can look at the numbers and they can come through with assessments on what they believe might be happening. I think it's a very important step. As I mentioned, other jurisdictions are doing this. Just our neighbours, Washington state and Oregon state, are taking those important steps.

I wanted to ensure that I read from my constituents some more details around what information will be gathered from the industry. If this legislation is passed, the companies will have to provide key data.

Some of that key data is refined fuel imports and exports,

including volume and source and mode of transport; inventories of fuel at primary and bulk terminals; storage, throughput, cleanup and blending of capacity of primary and bulk terminals, upgraders and refineries; retail fuel prices and the volume sold at each price; comprehensive breakdown of fuel sales; wholesale prices and volume sold at each price; refinery capacity; operational uptime and shutdowns; volume of fuels refined within the province; and finally, volume of feedstock delivered to a refinery. All very, very important information.

[1:45 p.m.]

Again, some of my constituents have been asking questions to me. So this is important information that I want to share with them. Public reporting is, obviously, a fundamental part of this framework. This legislation requires timely reporting of a range of key metrics by the fuel industry to government to allow for a public release. This includes an allowance for the release of commercially sensitive information when it's determined that the public interest in that information outweighs the potential harm to the private interests of the fuel companies.

The final details — obviously, the regulatory and how these reports will be structured — will be determined by the independent body, which is, of course, the B.C. Utilities Commission.

Again, I want to thank the minister for bringing this piece of legislation in. It's critically important that this building — the work we do here — is transparent. I think it's very important, also, that the oil companies are transparent on how they set their prices so that the public can have some sense of confidence that....

Many have suggested to me that there's price fixing. We need to ensure that this information gets out there so that people don't think that way and that they can see that it's clear, and the information is out and is transparent. Public agencies that are doing advocacy work along these lines have the opportunity to get that data and come to their own findings and come to their own conclusions.

Again, we're not the only ones, as I've said. Other jurisdictions are heading in this direction. I think it's an important step for transparency.

As I said earlier, I'm grateful to the minister for stepping up and ensuring that this transparency is there. I know it's important to him and his constituents. He understands that it's important to all of our constituents. So I really hope that all members of this House support this, ensure that this thing goes through so the public can have confidence that they're not being ripped off at the gas pump and that there's transparency on how the pricing is done.

Thanks to the minister. I'll take my seat to listen to other speakers.

**Hon. H. Bains:** I'm happy to stand and speak in favour of Bill 42, the Fuel Price Transparency Act, which proposes to establish a mandatory reporting framework for

companies involved in supplying gasoline and diesel in British Columbia.

Now, I see many guests in the gallery. I believe they're all students visiting this Legislature. First of all, I say welcome. This is the House where all the laws are made and debates take place before they're passed. I hope that this is a really good experience: to come here and see what happens when people are making laws that affect you, your parents and your neighbours.

I don't think many of you are drivers yet, but I think this issue is important to your parents and your neighbours when they are driving. You've seen — and I've seen, driving around with my children — gas prices. You go there in the morning. It is set at \$1.59 a litre. But in the evening, the same gas station is showing \$1.39. How is that kind of fluctuation of that magnitude...? Where is the justification for that?

I have seen that, other times, lack of competition.... If there is a gas price at one gas station of \$1.49.9, you go around, and at every other gas station, you'll see exactly the same price — \$1.49.9. There is no justification. You go across the line. You see four gas stations at the same cross-section, and you will see four different prices.

What is going on here in British Columbia? Part of the problem is that the prices that these oil companies and the gas companies that supply gasoline to British Columbia.... They make these decisions in secret. We're saying, through this bill, that decision-making process, the lack of transparency, making decisions behind closed doors — those days are over, because people of this province deserve better.

[1:50 p.m.]

When we put BCUC in place to investigate what is going on in British Columbia compared to other jurisdictions, they came back with a very comprehensive report. They looked at all of the costs that are incurred by the gasoline and oil companies — the transportation, the warehousing price and the commissions they pay — and then they added all that up.

Then there was 13 cents per litre. There was no justification, and no one could actually say to them why there was a 13-cent difference and no justification. The gasoline companies could not prove why they're charging 13 cents a litre in B.C.

When we go and fill up our car or truck at a gas station, people feel that they are being gouged. They feel that they're being ripped off. I think this bill will stop that.

At least we are asking the gasoline companies: "Why are you treating British Columbia so differently than other jurisdictions?" On any given day, the gas price in B.C. would be 20 cents a litre more than the other jurisdictions. Then you take a look. There are real issues. The 13 cents per litre — there was no justification. There was no way to know where that 13 cents came from.

As a result of that, British Columbians have been paying \$490 million every year. This unaccountable 13 cents that they are charging British Columbian motorists.... That's why I think government is compelled to stand on the side of British Columbians and say: "Look, gas companies and oil com-

panies, you have some justification to do here. You need to be more transparent. You need to be accountable for what you're doing."

No one argues against competition. No one argues against companies making profit, because that's what companies do. We encourage them to do that. That's how they grow. That's how they create jobs. But you cannot gouge people just because you can.

Right now I think we are looking at, through this bill, that there will be some justification. They will have to explain why and how they're setting those prices. If there is a reason to charge that 13 cents, we're saying: "Prove it."

The other thing is that BCUC also looked at the other jurisdictions, as I mentioned earlier: Washington, Oregon, Australia, New Zealand. They have this kind of a transparency act in place where the gasoline companies must provide information on how they set those prices.

I think when we are talking about affordability issues, we're talking about all the other costs in the Lower Mainland and outside of the Lower Mainland. Housing prices went unchecked when the other party was in government. Mayors, communities and everyone else asked them — they pleaded with the other government — to do something about these runaway prices on housing.

No one from the new generation can afford, even dream about, owning a house. They can't even afford to rent a house, never mind owning one. Many of them, even with well-paid jobs, are not coming to Vancouver because they know that living expenses are so high that they could be better off going to other jurisdictions. So we are losing talent as well.

I think part of the reason for this — why they didn't do anything about the oil and gas prices — is that, maybe to the surprise of a lot of people, they took \$700,000 in political donations from the major oil and gas companies. That's the B.C. Liberals. That's why they came to their defence.

Even today they are defending the oil and gas companies gouging British Columbians 13 cents a litre for no reason. There's no explanation. There's no justification. But who comes to their aid? B.C. Liberals. I think \$700,000 can buy you good support from the entire caucus of the opposition.

Well, if that's how business is done in this province, we need to change that. This act, then, will be forcing the oil companies to justify how they set their prices.

[1:55 p.m.]

Now, in a free enterprise, prices are set by supply and demand. We get that. But here supply and demand didn't even work, because they simply, I would say, held British Columbians at ransom. There are only a few areas where the gasoline could come, and only so much could come, and they believed that they could charge them no matter what and they didn't have to justify it to anyone. I think that is wrong, and that's why this bill is so important.

I hope that the opposition, after sitting over there 28 months, have learned something — to be with everyday people of the province, be on their side at least once. Hope-

fully, you will support those hard-working, middle-class working people who go to work every day, pay their taxes. They obey the law. Those are the people that are being gouged. They go to work. They need gasoline to fill their car, their pickup truck. Why are they being gouged and ripped off at the gas station? No one could explain. BCUC tried to ask them to justify it, and no gas company could justify that.

I think that's why we are compelled to bring this piece of legislation. I want to thank the minister responsible for taking this initiative so that we could at least add another piece of affordability to make life more affordable for British Columbians. After eliminating MSP premiums, after eliminating tolls, now this other piece will give them some break, hopefully, so that companies will be extra-careful and they will not be able to make decisions in the back room. We will be lifting the curtain of secrecy with this bill. That's how I view this bill, and that's why I'm supporting it.

I could say a lot more, but I think the time isn't there for me to continue on. I want to say thank you, Minister.

Interjections.

**Hon. H. Bains:** I may have touched a nerve over there, but I have said enough. I will take my place.

**N. Simons:** It's a pleasure to be able to speak in favour of Bill 42.

Just for those in the gallery — I think they're grade 5s from École Mount Prevost in the Cowichan Valley — welcome to the Legislature.

Right now we're debating a bill. A bill is what we call it before it becomes a law. When it becomes a law, this law will require oil and gas companies to tell us how they set their prices.

When you pass a gas station and you see the price on the sign, sometimes it's different everywhere you go. We want to know why it's different everywhere you go. I've got to tell you, people where I come from on the Sunshine Coast, and Powell River especially, want to know why they've been paying the highest gas prices in all of Canada for the last six months, at least. It's been \$1.59, and that's a lot.

It costs a lot to fill up your car, and most people don't have other options. So what we're trying to do as a government is make sure that when the prices are set, they're set in a way that's fair and in a way that isn't just what we're calling gouging, taking more than they really should from the people of this province.

I'm really glad that the Minister of Jobs, Trade and Technology.... What else? A few other things. He put forward this bill. That was his job. He put it before the House. This is what we want to do to try to help fix things, because we don't have complete control over the price of gas. People in my constituency, the people that I represent in Powell River–Sunshine Coast, say we need to do something about it.

By the way, for those watching from Powell River–Sunshine Coast, we do have a town hall meeting scheduled for

December 15. I know that there will be a lot of people coming to that, because a lot of people are really concerned, and they want to know what they can do about it. Well, I'm going to tell them about this legislation that I hope is passed in the next day or two. It will allow us to at least tell people that while we can't tell them how much to charge for gas, they've got to tell us why they're charging so much for gas. That's a good start.

Enjoy the rest of your visit to the Legislature.

With that, I'll just go on to some of my notes.

[2:00 p.m.]

Recently Pieta Woolley, a well-respected journalist who wrote for papers in the Lower Mainland.... She's written in the north as well. She tried to determine what it was that was causing the price in Powell River to be so high. She did a couple of articles in *Powell River Living* magazine to try to break down where the price of \$1.599 came from, whether it was in the price that we were paying or the price that it cost to transport that fuel or if maybe there were extra profits being made.

She said that in her long career, she has never run into a bigger roadblock — “a brick wall,” she called it — or a bigger brick wall in trying to find answers than when it came to finding out why the cost of gas was so high in Powell River. She said she's never seen anything like it.

She said she called one of the companies that does the distribution for gas. They said: “Well, it's not our practice. It's against our policy to tell you how we pay this price.” In fact, they said: “The Competition Bureau tells us that we shouldn't disclose how the prices are set.” She thought, “Well, that's kind of strange,” and called the Competition Bureau. The Competition Bureau said: “Well, there is sometimes an agreement between companies on what they disclose and what are private and what are commercial interests, but there's no real reason for them not to tell us.”

I have a few quotes that I want to just make sure I read into the record, because quite frankly, I think that her research on the subject, due to the demand in our community, was thorough. It was thorough, and it was revealing, I must say. Pieta Woolley has made numerous efforts to get to the bottom of the gas price issue.

Let me just quote what she said. “In my decade-plus working as a news reporter in Vancouver and the north, I've never encountered such a brick wall as this gas prices story has been. There are simply no tools to compel private businesses, big or small, to reveal their gas pricing, unless you're the B.C. Utilities Commission. Who wants this story told, besides everyone who buys gas? Not the suppliers.”

She said that some people in the local industry were happy to talk to her, but they didn't want their names used, and there was a little bit of fear about saying too much. Others, she said, “belligerently refused to reveal even basic information about how their business prices their services.”

One of the concerns, or one of the questions we were asking, was whether the 18-cent TransLink fuel tax was being misapplied to Powell River–Sunshine Coast gas prices. She

thought maybe gas companies didn't know that if you're selling outside of the area, you can apply for that money back from the Minister of Finance. She was trying to figure out if, in fact, they're paying that in the first place and, if they are, whether they're applying for the rebate, because that could explain the exorbitantly high gas prices in Powell River that we've seen for so many months. She wondered if either the Powell River-based gas purchasers didn't know about the rebate or if they hid it.

One of the things that I'd like to do is try to figure out if we can find out who's applying for that rebate. That's part of the task I'm set out to determine.

When the reporter Pieta Woolley asked one of the owners of the local gas stations, their media representative wrote.... Here's the quote about the Competition Bureau: "The Competition Bureau prevents us from discussing the specifics of pricing, but I can assure you that we always strive to offer competitive gasoline and diesel prices in all markets where we operate."

The senior communications person at the Competition Bureau said: "It's considered good corporate practice for companies not to discuss or share pricing or pricing policies with their competitors. However, the bureau's guidance doesn't specifically address what information a company may or may not disclose to a journalist." So the distributor, the company, could have told her, but they chose not to.

[2:05 p.m.]

The Competition Bureau added — I think this is important — that since 2008, ten years, there have been 33 individuals and 12 companies that have been found guilty of fixing the price of gasoline in several markets, mostly in eastern Canada. Their fines totalled almost \$6 million.

Getting to the bottom of how prices are set is a key component in not only just determining how prices are set but maybe putting on notice the companies that are setting prices where there's unexplained.... Thirteen cents unexplained, I think, was the B.C. Utilities Commission's determination. After all other costs were put together, there was 13 cents that was unaccounted for.

I would suggest that there's a larger amount unaccounted for in gas prices on the Sunshine Coast. I would point out that gas prices in Iqaluit are \$1.25 a litre, and Iqaluit is kind of harder to get to than Powell River most days. You have to go up around Quebec and into Hudson.... It's a little bit farther. Baffin Island is difficult to get to, and if you're carrying gas, it's expensive. So transportation costs and subsidies might have some part to play, but ultimately, we have many questions that have been left unanswered.

When the B.C. Utilities Commission asked for comments from the public, they received close to 100 responses. I would point out — and it's due to the acuity of the problem in Powell River — that 20 percent were from Powell River residents. I don't mean to diminish the concerns that other communities have, because we're all suffering from the same gouging. However, some are gouged more than others, and I

worry that my constituents are suffering disproportionately due to their pricing system.

I look forward to a town hall meeting where the impacts of gouging the families and the businesses of my constituency can be discussed, where we can document the impact on their lives, on peoples' lives, on affordability issues. That's why our government has taken the step it has.

You know, we understand jurisdictional issues sometimes prevent us from doing everything we want, but I believe that this is an important step, one that I hope is supported by colleagues from all sides of the House. Sometimes shining a light on something brings with it accountability, and with accountability, the transparency that comes with that only can serve the public's best interests.

It should be clear that the legislation does protect commercial interests, but we're asking for more from the gas companies, and we're asking for more in the interests of the public. As corporate citizens, I hope they don't see this as a problem. They seemed to be hesitant in terms of trying to make their explanations known earlier, but sometimes legislation is required to put everybody on an even footing so that everyone has to operate with the same rules and the same responsibilities to tell us, tell the public, what is what.

For a long time, we've been frustrated by the price of gas. When it shoots up for no apparent reason, people feel like they're getting ripped off, and I think people are getting ripped off. We've heard the official opposition express some hesitation around this requirement from the oil and gas industry. I don't know if that's because they want to remain friends or if they're worried about fracturing a relationship that has served them well.

[2:10 p.m.]

Fundamentally, I don't see how the opposition could be opposed to increased transparency and increased accountability for companies that do business in British Columbia and benefit from the hard-working British Columbians who pay for the services that they offer.

They shouldn't do so. It's not a blank cheque. They shouldn't do so without understanding where the prices come from. For that reason, I'm very pleased that our government has made the decision to require accountability through the Fuel Price Transparency Act. With that, I thank you for the opportunity.

**P. Milobar:** "Every tool in the toolbox." Who can forget that chestnut that has been provided by the government? Every tool in the toolbox — about a project that would help with supply issues into British Columbia when it comes to oil and gas.

Here we are today dealing with a piece of legislation to bring transparency, supposedly, to the oil and gas industry and to the price at the pump to try to provide people with some explanations for pricing.

All of that sounds good on the surface, but it doesn't guarantee that there'll be any price drops at the pump. As we heard from the Labour Minister, for people fueling up to go

to work and school.... It's very expensive to fuel up to go to work and school. In fact, because of a lot of inaction on the other side, 400,000 people tomorrow on the Lower Mainland are going to have to figure out a way to fuel up to get themselves to work and school because of a transit strike that the government seems to not be too worried about. Instead, they are worried about other things.

This bill takes a step to try to address and get an insight into pricing. But unfortunately, as we've seen time and again, if anyone on this side of the House has the temerity to raise some concerns, to raise some issues and to raise questions about a piece of legislation by this government, you're instantly branded. The fearmongering that goes on is quite remarkable, coming from the government side.

I would point out that I've lost count of how many bills have been presented that have had to be slow-walked back. I think of the Agriculture Ministry — and the sheer volume of bills — that's seen things being walked back. The surveillance plan by the Agriculture Minister that's had to be walked back. We've seen other things, around the speculation tax, dragged out and walked back.

The fact that we may be a little skeptical about the proficiency of the government to actually deliver a piece of legislation without having a bunch of flaws in it would, I think, stand the test over this last 2½ years.

My concerns have been characterized by the minister as trying to stand up for the oil and gas industry and trying to defend the oil and gas industry when it comes to privacy. That's not where my concerns lie. My concerns lie with the overall handling of confidential information for anybody.

If this was a grocery store bill in front of us for transparency into pricing, I would have the same concerns about competitive information, proprietary information, being released at the whim of a government. I think everyone should be concerned about that. We've seen an unparalleled collection of information by this government on all sorts of things — again, with the speculation tax, having to provide your social insurance number to the provincial government — and having other forms of information trying to be collected.

Going back to the satellite surveillance that the government was going to try to do on people's agricultural land, this is a government that has been demonstrating, time and again in the last 2½ years — ironically enough, with an Attorney General that used to be in charge of the B.C. Civil Liberties — that they want any and all information they can possibly get from you. And they will use it as they deem fit to further an ideological agenda.

Again, I would suggest that the price of groceries for people would have as much of an impact to their budget as fuel costs do. When I put that lens on it and when I put the lens as a former hotelier on it in terms of the fluctuation you see on hotel prices and the ebb and the flow of them....

[2:15 p.m.]

I can remember when we were trying to collect information as a local tourism association, trying to get each com-

petitor's average daily rate to be able to get some sense of what was going on within the local accommodation market. Operators were rightfully protective of that competitive information.

This isn't about protecting big oil and big gas, as the minister wants to try to portray it, because they're very good with the over-the-top statements. This is about trying to protect information. I say that because in the bill, first it says that the administrator needs to follow privacy rules. Then it says: unless the administrator feels that that information would be better off released publicly.

Why that's a problem in this bill — and I look forward to committee stage, for the minister to try to defend this shoddy piece of legislation — is because a lot could have been done to make this better. The administrator could have already been named. Instead, the administrator of this bill, after the bill has passed, is anticipated to be the BCUC, which I take no issue with. They do very professional work. But instead of naming and putting into legislation the BCUC, instead it's this vague reference to an administrator.

Why that's significant is that once this bill is passed, the administrator can be appointed by order-in-council. And it can be changed at any time by order-in-council. This means that if the BCUC is not releasing the documents that the minister or the Premier may feel are to their political advantage, the government can simply, in order-in-council, change the administrator.

That's wrong. That creates an environment where an already politically charged topic like prices at the pump gets heightened even further. If the government was sincere about making the BCUC the administrator, the government should have said that BCUC will be the administrator in this legislation. Full stop. If the government does not have confidence in the BCUC full-time to do this role, they should be honest about that upfront and say who the administrator of this bill will actually be after it's enacted.

The government should not have a clause in this bill that says that although we recognize we are demanding, by law, confidential corporate and competitive information, we will, at our own discretion, release that information if we deem, frankly, that it's in our political best interests to do so.

I say that under the backdrop of 18 months ago, when prices spiked. The Premier promised that if prices stayed high, he would take action. He has still not delivered or told us what one of those actions he considered 18 months ago were. Seven months ago, eight months ago, he never said what any of those actions were. Instead, we got a sham of a review where the BCUC had their hands tied, as a professional organization, from looking at all factors that go into the price at the pump.

I look forward, in committee stage, to the minister being able to point to the section that also provides transparency from government policy and government taxation to the BCUC or whoever the administrator of the minister's choice happens to be for that week. I'm hard-pressed to find it in

there. I'm hoping I just missed it, and I'm hoping that perhaps the minister will be able to point to it.

Just like the BCUC review, the government doesn't want anyone to actually look at their own policies. The government doesn't want anyone to look at provincial taxes at the pump, which are the highest in North America. The government doesn't want the public and the BCUC to look at government policy around things like the low-carbon fuel standard and CleanBC, which are going to actually add much more costs at the pump. In fact, the government doesn't want to even acknowledge they've done any modelling when they put that into CleanBC, about what the impact to the price at the pump will be.

To stand here and listen to the drivel coming from the other side about us trying to protect the oil and gas industry, trying to make sure that, in fact, we are just protecting people's and businesses' fundamental right to privacy — their private, confidential, competitive information — is laughable. The reality is that we're seeing this across the board in government. We have legitimate concerns.

[2:20 p.m.]

I personally don't have a big worry and a big concern that the oil and gas company may be needed to provide some information so that there can be a better understanding of how the price is set, contrary to what the government and the minister are trying to portray that as. But I want to make sure it's done in a way that provides confidence for the business that's providing that information.

Again, if this was a grocery store transparency bill, I'd be saying the exact same thing, because grocery stores have a right to be able to try to compete within their markets. So if we're going to have a generalized report so people can understand....

The perception is not lining up with reality. When you hear the other side talk about how there are price fluctuations all over the province at the same time that big oil is all working together and colluding together and gouging everyone at will, it simply doesn't add up. What really doesn't add up is the fact that we're not allowed to look at government policy and government taxation under this same lens.

The government will hide behind privacy the second they get. We see it on the few FOI documents we get back. Just about everything seems to get blacked out by government. They don't want to have anything released at all. Yet they made sure that in this piece of legislation, this flawed piece of legislation, there's a clause that guarantees that for whatever reason, under the guise of public interest, they can release whatever competitive, sensitive information they want and make it public. That is wrong. It's not wrong because it's the oil companies. It's just wrong because it's supposed to be protected information.

You can't have it both ways. You can't in one section say that things will be protected under the information protection laws and in the very next clause go on about how "except for the fact that we want to be able to release this if it's politically expedient for us to do it."

We do have concerns about this bill, because it's flawed and it won't actually accomplish anything that the marketing on this bill says it's going to accomplish. That's no surprise, because most things that the government has marketed in a lot of these types of bills are nothing more than a title, totally lacking any substance for actual result and deliverable as it relates to what they're marketing, the end product that's supposed to be accomplished by the bill.

When you take everything on balance.... I know we heard: "Oh, they took money from oil companies." Well, in the spirit of transparency, I really look forward to the government releasing how much their sponsorship dollars were from their last convention. Oh, sorry. They weren't sponsorship dollars — the advertising dollars that they collected from the unions three days ago.

In the spirit of transparency, I sure hope that number comes out shortly. In the spirit of transparency.... Surely the minister was not suggesting we were bought by oil and gas. Surely the minister of a government whose Premier, who went to Washington to solve the softwood lumber deal, and all he came back with was a cheque from a union.... Two and a half years later, we still have no softwood lumber deal, but we have mills closing all over the place.

Perhaps the Labour Minister is aware of that. Perhaps he's not. He doesn't seem to be too aware of the strike happening for the last five months in the forest industry, so who knows what they're actually aware of. He certainly wasn't aware of a mediator being requested well before question period today.

One could question: where did those dollars come from? To be totally blind to the fact we have labour disputes happening all over this province....

**Deputy Speaker:** Member, let's keep comments relevant to the bill.

**P. Milobar:** Absolutely. Thank you, Mr. Speaker.

That's why, again, the deflection techniques by the government around this bill when it relates to trying to relate things back to previous donations or any of that is nothing more than smoke and mirrors. We've seen those types of donations and sponsorships and advertising happen with or without rules in place. It's a very jaded way for the government to try to spin away from the fact that this bill does not actually even come close to accomplishing what they're marketing it to do.

[2:25 p.m.]

If we had this transparency in the dairy industry, this bill that purports to provide transparency, and you found out how much a gallon of milk was as a result of it — you read it in the paper, you went to the store the next day, and the gallon of milk was the same price — would it really matter to your pocketbook that you were told the day before how they calculated the price? No, it wouldn't.

Under this bill, your pocketbook will not change when you go to the pump. You might know what makes up some of the pricing. You're not going to know what impact government policy had on that price. You're not going to know

what impact the government taxation, in conjunction with those policies, will have on that price with this bill. No transparency for the government. Nothing to look at over there, especially if you FOI it.

The reason government policy is critical in this case is that.... When you look at our neighbouring jurisdictions that we get our supply from, namely Alberta and Washington state, and how much lower their prices are, it's interesting when you look at what their governmental regulatory regime is at a state level or at a provincial level, compared to ours, especially when you layer it with what their tax levels are in relation to the two.

Then you layer that on top of a jurisdiction who has policies like "Every tool in the toolbox." When that is the overall direction and guidance from a government that says, "Every tool is in the toolbox," to stop the flow of types of products, it does make one question how sincere they are about the worry of this. When you have a government that purports to want to get everybody out of their cars.... Most environmentalists will tell you it's a mixture of carbon taxes and fuel prices. In fact, when you talk to transit operators, they will tell you that when fuel prices spike, more people go on transit.

Now, I get why the government wants to tamp down transit numbers in metro Vancouver over the next few days. They're doing a heck of a job on Wednesday, Thursday and Friday this week of making sure transit numbers plummet to an all-time low. But the reality is that that flies totally in the face of what their supposed agenda is of trying to get people out of their cars. One would think that a government propped up by a Green Party would actually welcome high gas prices.

I don't. I come from a part of the province where transportation by vehicle is pretty much a necessity.

Interjection.

**P. Milobar:** I've got a half-tonne truck. It's a nice half-tonne truck, actually. Yes, yes. I have a Honda Accord too. The member for Powell River-Sunshine Coast is curious about what type of vehicle I drive, as if that's going to somehow shame me because I don't drive a green enough vehicle, I guess. I'm not sure.

I drive a half-tonne pickup truck, as many people in my city do. I'm not ashamed of that. In fact, many people that drive to work where I live, that rely on these fuel prices coming down, drive trucks. They drive bigger pickup trucks, and they're proud of it too, rightfully so.

You know what they want to see? They want to see this government take action to actually reduce the price at the pump. They don't need to know all the ins and outs of convoluted pricing formulas, which this may or may not even deliver. They need to see real change at the pump.

You know what they were promised 18 months ago by this Premier? Eighteen months ago they were promised action. They were promised steps would be taken. For 18

months, they've waited for those steps to be taken, and the best the government has come up with, after bungling it and blaming anyone and everyone under the sun for the last 18 months, is a flawed bill that is nothing more than designed to be a political hammer for the minister to use at will by appointing an administrator of choice, whenever they see fit, to get the right report out that they want structured in the way they want.

Although with the track record between B.C. Housing reports and child care reports, who knows. Maybe they won't even realize what types of reports they're sending out, with the numbers and deliverables on it. But that's fundamentally the problem with this bill.

I look forward to canvassing it at committee stage, because it's not about the concept of transparency, despite what the minister might want people to try to believe. This isn't about trying to protect the big oil and gas industry. This is about actually trying to get people savings at the pump, which has been promised for 18 months by this Premier.

This is about trying to make sure confidential corporate information, not just in this bill but every bill moving forward by this government, is taken seriously and protected so that we have some semblance of trust from the corporations of this province, which employ a great many people in this province, and their information will actually be held in confidence by this province and not just released at will to create a political sound bite and a distraction when they're having a bad week in question period.

[2:30 p.m.]

If that's the case, pretty much every week we're in this House, they're going to be releasing some sort of gas report to try to deflect away from the bad week they're having during question periods.

[J. Isaacs in the chair.]

The bottom line is this. I'm fundamentally fine with the transparency. I'm fundamentally fine with trying to make sure that people understand what goes into pricing. But let's make sure people get a full picture. Let's make sure of a couple of things. Let's make sure for any business or any person at all, any member of the public's information is actually truly protected by the government when they go out and collect it for information gathering and not just published back out to fulfil a political whim.

That could be removed from this bill. The BCUC could be inserted in as the defined administrator of this bill, as opposed to a concept as the administrator of this bill. Third, and most importantly, the government could be included in all of these reviews every time they get the pricing information, with the lens of looking at government policy and government taxation.

I look forward, again, to the minister pointing to the part of this bill that actually speaks to the fact that the government is required to provide the same information to the BCUC, or whoever the administrator of the week is, as the

oil and gas companies are. I know we're not going to find it in there, because the government doesn't want us to actually look at what they are doing. They don't want any transparency on what they are doing, and that's a shame.

Government should be transparent. Government should provide information to people when they're seeking it and wanting to know what the impacts of their government policy are. But that's not what's happening with this government. One thought that information-sharing might improve with the change in information ministers, but that hasn't seemed to be the case either.

Moving forward, moving into committee stage, it'll be interesting to see the reactions from the government when they have to try to justify why, in 18 months, the Premier has taken none of his promised action to reduce prices at the pump. It'll be interesting to see how they justify such a flawed piece of legislation.

Again, this would be flawed if we were talking about milk. This would be flawed if we were talking about groceries. This would be flawed if we were talking about hotel rooms. You name it — this is a flawed piece of legislation. It has nothing to do with the fact it's oil and gas. It has to do with the fact it was rushed together as nothing more than a political stunt to try to appear to be doing something when, in fact, they've sat on their hands and done absolutely nothing for 18 months.

Let's all remember: "Every tool in the toolbox."

**R. Coleman:** I'm pleased to get up to talk about Bill 42, the Fuel Price Transparency Act.

Every Saturday morning for about 35 years now, if I'm in town, I join some old friends at a little place called the Coffee Mug at 24th Avenue and 200th Street in Langley. For the last ten years, we'd go through this little game at breakfast. Breakfast is usually started by eight, and somewhere between 8:30 and nine, the service station across at the corner changes its price. Usually it goes up; seldom it goes down. But it goes up, obviously, by time and market.

The fact of the matter is that with regards to pricing and the work the government claims to have done to bring this act here, it's somewhat frustrating only from the main aspect of that when they asked the B.C. Utilities Commission to look at gas prices, they didn't allow them to look at all the things that are in the gas prices.

The carbon tax is going from \$30 to \$40 to \$50 a tonne. That goes into every single person's gas tank when they go to the pumps. Who raised that tax to raise the price of gasoline in British Columbia? The NDP government.

[2:35 p.m.]

As you go through this, you'll see different taxes and different pieces of tax that are paid out for road taxes. There are some federal taxes. In my area, there are also the transit taxes that go to pay for transit. Now, ironically, my constituents tomorrow will still be paying transit taxes, but nobody will have any access to transit.

That piece is a significant piece — the taxes that are differentiated by region of the province. For instance, I used

to live in Aldergrove, and now I live in Langley township. Aldergrove is part of a township, but I'm living in another area of Langley.

When I was a kid growing up down on Lakeshore Drive, we used to call it Motel Road in Penticton, because it was all motels, motels, motels, motels. In Aldergrove, we call it Gasoline Road, which is Fraser Highway on the other side of 276 Street. The businesses on this side of the street, on the western side of 276, are paying transit tax.

We've seen the convenience of gas stations drop from a number to two. The reason for that is that all you have to do is drive a quarter of a mile, and you're in Abbotsford, where they don't pay the gas tax. All of a sudden, it's cheaper to go there by eight to ten cents a litre on a regular basis.

I also live in a community that's very close to the border. The regular transportation, in this case, is north and south for people to go down, picking up eggs and cheese, milk and gasoline. So in actual fact, we have a price situation that drives business away from our small businesses in my community.

My disappointment, as I looked at this act and the backgrounder on it, is a couple things. I never saw where anybody looked at any other jurisdictions and what they do and how they've tried to approach this issue. I will get into the pricing of gas and what we call the cracking of the barrel, where the fundamental values come out of a barrel of oil into other factors, in a minute.

First of all, let's look at the rest of Canada. In the rest of Canada, there are one, two, three, four, five provinces, all east of Ontario, which have some formula and management relative to the gas prices in their province.

In Quebec, for instance, they set minimum prices weekly, based on its estimate of the acquisitions — the cost of gasoline. The price includes an estimate of transportation costs and can include a minimum retail margin at the discretion of the regulating body, which is the Régie de l'énergie du Québec.

In New Brunswick, the Energy and Utilities Board sets the maximum price every Thursday, based on a formula that links the price to the New York Harbor price, with allowances made for other factors, such as retail margins, and no minimum price is set.

Nova Scotia also uses the New York Harbor spot prices to set a benchmark price. Wholesale prices are set six cents a litre higher than the benchmark, and a transportation allowance is included in the price, ranging from 0.2 cents a litre to two cents a litre, depending on the zone. Retailers are allowed a margin of 5.5 cents per litre and cannot sell below a margin of four cents per litre.

In Prince Edward Island, the prices are set by the Island Regulatory and Appeals Commission. The commission has full discretion in setting prices and tracks a wide variety of trends determining the price level. In practice, it also uses the New York Harbor prices to drive changes to the regulated price.

Prices on the New York Mercantile Exchange are averaged



over a two-week period, and the new maximum and minimum prices are usually announced on the first and the 15th of every month. Wholesalers have the right to apply for a decrease to their wholesale price. In theory, this could result in different price from one brand to another. In practice, any such differences are rare and short-lived.

In Newfoundland and Labrador, the price of gasoline is set by the Board of Commissioners of Public Utilities. The board sets a benchmark price based on spot market prices and adds on various factors — such as wholesale and retail margins, transportation and taxes — to arrive at a maximum price. The province is divided into 18 zones to accommodate differing transportation costs, and prices are revised monthly.

[2:40 p.m.]

Now, I don't know if the Utilities Commission or the minister — I guess we'll find this out in committee — have actually looked at any of this and had any of this information available while they drafted the act to move forward. The challenge with this, though — and it's a frustration for me as a Canadian — is that we're actually talking about fuel prices in one area of Canada based on the New York Harbor price on oil that is not coming from Canada but is actually coming from other countries because we won't move our oil across our own country to supply our own country of Canada.

The frustration with that is that some of that oil doesn't necessarily come from ethical places — ethical places being where there are human rights and freedom of speech and democracy. Yet we buy that oil, and we do it at the negative impact to our own country and our own resources in Canada. We should never forget that, because it is, quite frankly, shameful, in my mind.

The one thing we should be sure of is that the legislation before us today doesn't do anything to bring down prices. That is supported by UBC professor Werner Antweiler, who says that the proposal is “not going to do a whole lot of good and certainly not bring prices down.” He said it in the *Vancouver Sun* on November 7 of this year.

The Premier, a few years ago, said: “I have a range of options I'm going to look at.” But in reviewing it, he took one of the options completely off the table, and that is what the impacts of taxes are on the price of gasoline and markups in British Columbia. Is there markup on top of taxes? That has a differentiation of how the wholesale price is taken or not. Is that part of the solution? Is that part of the issues in and around that?

It's been almost three months since the first BCUC report on gas prices. The Premier has done nothing to help drivers in that period of time. Lots of excuses have been given by this government, but no solutions.

Rigging the review of the NDP taxation to take the taxes off the table when the Utilities Commission was to look at this sort of makes it impossible for them to actually come back with a legitimate report. Nor would it be able to answer any of the questions someone might ask about what's being done elsewhere in the country. They know their taxes, and

what have you, are baked into the price when they decide to set it in those jurisdictions. We don't have that here.

I can tell you that if there's one question and if you want to have a conversation, particularly in my riding in the Lower Mainland of British Columbia, when you pump up in your car or your truck, ask the person at the other pump what they think of gas prices. It's a great opener. Everybody says that it's too high. Then you explain to them: “Well, the carbon tax has gone up from \$30 a tonne to \$50 a tonne. That affects it. This tax is on there. That tax is on there. There are federal taxes and provincial taxes. And there are transit taxes.” You get interesting responses. That's the best way I could describe it.

Most of the legislation is to be implemented by regulation, which is not always unusual. But in actual fact, in this particular case, it's going to need some refining and also some better information. The legislation requires fuel refiners to submit information regarding processing, refining, storing, transportation and marketing or supplying reportable fuel to government. That's a mouthful.

What happens with a barrel of oil is very little understood by people, with regards to a barrel of oil arriving at a refinery. In the business, they call it cracking the barrel. So a barrel of oil will rise, and it goes through a number of processes. Those processes could extract certain types of liquids that will go into making clothing; that can go into making bio-fuels; that can go into, quite frankly, making plastics for cars. That piece of the puzzle is one piece of the value chain of the barrel of oil. Then there's diesel. Then there's gasoline, which then goes through a refining process.

Each one of the by-products of a barrel of oil actually affects the long-term retail price of a gallon of gasoline, or a litre, as we like to call it. I'm old school and grew up just before they did the metric system in Canada. The reality is that other factors affect that.

[2:45 p.m.]

Is there a shortage of diesel somewhere in North America while you're doing your gasoline? Does that affect the price that drives down or drives up what your valuation coming out of that barrel can be? Does it affect your ability to price in a certain way? Or is there a shortage anywhere?

Now, everybody knows that in North America there hasn't been a significant refinery built in well over 30 years. We've expanded refineries, but we've not built a new one. The challenge with that is that the capacity to actually refine oil and gasoline in North America is always chasing its tail to what the demand is of the marketplace for gasoline, because at certain times of year, it can't refine as fast.

In the last couple of years, we've noticed how the price has spiked. A relatively simple answer to that is that two refineries have had to take downtime to retool and modernize their equipment. These things don't run forever, and they need to be maintained.

This is the challenge we face as we come through committee and into this legislation. The volumes, the source, the destination, the modes of transport — all of those things

affect at the refinery and at the terminals and at the wholesale and retail prices.

The conversation isn't necessarily about the guy who gets the most criticism, which is the retailer at the very front end who actually has his prices set at his pumps — not in his or her control. That is set by a corporate situation averaging costs, sometimes with regards to where supply and demand are higher or lower. Those are things that have to always be factored in when you decide to look at something like this.

The government is asking for reports. They will ask for collected data on gas prices, as they try to go forward with this, and then come up with some kind of an entity that will actually define how you get to what the true prices of oil and gas are in British Columbia. And they need to actually address the issue of the taxes.

Now, as you go through this bill, there's fuel data wanted and information with regards to how this is done; reportable activities in the processing, refining, storing, transporting, marketing and supplying supportable information and fuel to the gas station, which in itself is a mouthful; and then reporting on other types of by-products that come out of the barrel of oil relative to how somebody is going to be able to set their price.

There will be an administrator — not necessarily the B.C. Utilities Commission but an administrator — which will then also be defined in regulation, according to the government. They will be able to comply.... Supplementary submissions will be able to be done by companies, and people will be able to come forward with their information. They will come up with a formula as to how they set the prices at a minimum and a maximum price, perhaps, or where it can go in the province. They are given permission to file this under the act.

There is one thing in here that is interesting from the standpoint that trade secrets and other commercial information may be disclosed as a public benefit and may outweigh any potential harm to a corporation. That is a challenge in that the processing and refining processes are different in some refineries. The actual fact that the.... In addition to that, as we go through that, it will be: what is sensitive information?

If a corporation has actually found some additive that makes the fuel cleaner for carbon or makes it cleaner for the engine, should they have to disclose that information to give it to their competitors who haven't done the research and development with regards to a particular product? I think that's a piece of this act that definitely has to be discussed in significant detail. And in consideration of the public benefit.... You know, the government must also consider, in this bill, market competition, public confidence and said competition.

Then there are the audits, which will basically be submissions and inspections of private facilities as enabled. How will the government of British Columbia go down into the U.S. and audit a facility in another country? A lot of our oil,

gasoline and diesel in British Columbia comes from south of the border.

[2:50 p.m.]

We actually don't have a ton of refining capacity. We have some in Burnaby and a smaller refinery in Prince George. How are you going to go into another country governed by another set of regulations and actually audit that information and get it under this act — or in any act, for that matter? Quite frankly, private facilities run by companies not in this country are actually covered by the rules of that country. So that will be something that needs to be canvassed as we go through that.

There will be offences and penalties. For what? Who are you going to ask for the information? If you have five little gas stations and you actually are buying your gasoline through one supplier, you don't actually have any control over anything that comes to your table, except for what you had to pay per litre to buy it at the wholesale price and mark it up.

If you're a large company, you will buy in bulk. But as you transport that gasoline through the province, you'll actually triage how you will deliver it. In some cases, you'll send a tanker truck to, let's say, the South Okanagan. In actual fact, your customers don't need the entire tanker load. So independents will also be buying gasoline from you, and you want to cover some of your transportation costs and your ability to do business.

These are important things to discuss as we go through it. The bulk of what I just described is enabled by this legislation. It's not in the legislation. It will be regulation that will do this. That'll be the form and style of how things are and the modes of submission, etc. Of course, regulations can be modified to adapt.

The bottom line is that this legislation does nothing for the affordability of drivers in British Columbia. Until we actually get down to how we're going to tax — either continue to tax or moderate the tax on British Columbians — we will see people continuing to gravitate from the Fraser Valley out to Abbotsford and Mission and out to Chilliwack because they can buy their gasoline cheaper because of the tax.

We'll continue to see the lineups at the border that we see every weekend, going down across the border and, like I mentioned, to gasoline row on the other side of 276, and the Fraser Highway going out to Abbotsford. There are also ones just south of the border in Sumas and in Bellingham and in Blaine, because the Canadian buyers are coming down to buy the gasoline.

We have to recognize that this legislation isn't going to reduce the price. But as we debate it in committee, we've got to get down to how we deal with trade secrets, how we do with formulas, how we're going to actually understand how the cracking of the barrel is broken up and the gasoline and diesel come out and go into one shade of the market and the plastics and other go into others. This is complicated.

In actual fact, we should also, as British Columbians and Canadians, recognize the fact that things like the Trans

Mountain pipeline need to be built to move our product to market and to allow us to increase our capacity for refining but, at the same time, allow Canadians to benefit from the money that is brought in by that resource — particularly a province like Quebec, that receives billions from the rest of Canada — and be able to understand that our resources help pay to run this country. Those provinces running a deficit are actually picked up by the strength of the resources from western Canada, for the most part.

Let's get our act together in many ways, I'd say. Let's quit trying to find somebody at fault here and understand what the industry is we're trying to deal with and how it can be fair to our consumers so that they're not being unfairly priced but, at the same time, recognize that as we do this, we've got to do it in a way that we're not trying to go over international jurisdictions where we can't actually go get audit information on how the gasoline is refined and priced south of the border to come to here.

At the same, would we put that extra red tape just on British Columbia refineries and suppliers? Or are we going to ignore the United States refinery that's also shipping into our jurisdiction? Big questions.

The reality is that people want, at the end of this, solutions to having gas prices not be so high, and in actual fact, they want to know that they are getting the best product. Some of the times the best product is made by one company over another. They deserve to know that from the companies, but not the state secrets that may actually affect the ability for them to deliver a good product at a good price.

[2:55 p.m.]

**J. Sims:** It's my pleasure today to rise and speak in favour of legislation being brought forward by the Minister of Jobs, Trade and Technology — Bill 42, the Fuel Price Transparency Act.

I can say, on behalf of the residents of Surrey-Panorama, that I really, really appreciate the minister bringing forward this piece of legislation. We know that British Columbians, especially those of us who live in the Lower Mainland, the Surrey area, have been frustrated and confused about the changes in pricing that have been occurring at the pump.

Quite a few months ago, when we know that the provincial tax went up by one cent, we watched prices in Surrey jump up by anywhere from 20 to 28 cents, down one block of a highway. That was really surprising, because nobody could understand how one cent extra in taxes could lead to such a huge jump at the pump.

Of course, most of us.... Because, for the last 16 years, such poor investment has been made in public transit and those who live south of the Fraser have been left out in the cold for transit investments, we rely on our vehicles to get to work, to visit family, to visit friends, more so than, maybe, downtown Vancouver. So we notice the price of gas as we fill up our tanks.

What's more significant are the amazing things we are seeing at the pump, and this is where it has left the public con-

fused. I can say that I have experienced some of that myself. So you start off....

I'm going to use the King George Highway as an example. I leave the hospital where I'm visiting my mom, and I can hit gas prices anywhere from \$1.26 to \$1.58 down that one piece of highway. A very short drive — well, not really, because it's usually gridlocked in traffic. So you can go from one gas station to the next and see a difference sometimes of as much as 30 cents. The public cannot understand that. Obviously, the B.C. Utilities Commission had some questions as well, but they didn't get the information they needed, the data they needed to make an informed ruling.

I think it is perfectly appropriate, and I'm so delighted that the Minister of Jobs, Trade and Technology has brought this forward so that we can begin to understand. I've heard a lot of histrionics from the other side, how the sky is going to fall if this bill passes because somehow it's going to interfere with the free market in a way that's going to be detrimental.

Really, what we're trying to do is understand. If, as a government, we're going to look for solutions and how we move forward, and the B.C. Utilities Commission is going to look to see how to handle something, first you need the data. You need the information. But if oil companies are not providing the information, then I think it's perfectly appropriate and a responsible thing for the minister to bring forward legislation that will give us that kind of transparency so we can start making informed decisions.

None of us like paying high gas prices. All of us can remember when gas prices were in the two digits, and now, of course, it's very rare that you find gas under a dollar. And if you're in the Lower Mainland, you're going to find it a lot higher than that. But there is a huge, huge discrepancy from pump to pump to pump. I'm not talking about different cities. I'm talking about the same street in the same city.

I am really pleased to see this. I look forward to getting this data, getting this information so that we can come to an informed understanding of what is at play. That's what this is about. As any teacher would say, it's good to find out what the problem is before you start throwing out solutions.

[3:00 p.m.]

**J. Brar:** I'm really pleased to stand up in this House to support this bill. This is a very important bill, the Fuel Price Transparency Act, introduced in this House by our government.

It's incredibly frustrating to watch the price of gas shooting up for no reason. That's what I hear from people every day. People want us to do something to make oil companies more accountable to the customers of this province.

A friend of mine told me a story a few weeks ago. He went to a temple to attend an event. He was there for about an hour and a half to attend the event. When he came out, after about an hour and a half, he told me that the price went up almost 20 cents. That could cost a driver in B.C. anywhere from \$12 to almost \$20, depending on the size of the car. It's a significant price shooting up within a very small time.

The British Columbia Utilities Commission found that there are considerable markup margins on the price of oil. The commission also revealed that the oil company refused to provide any explanation for the additional 13 cents per litre premium being charged to the people of British Columbia.

The premium results in British Columbians paying an extra \$490 million every year, and \$490 million is a lot of money. The people of British Columbia can build about 15 new schools every year with that money. That's how much more the people of British Columbia are paying because of the 13-cent price, which the companies are not prepared to give any answer to. That's a lot of money.

This bill sends a very clear message to the gas companies. The message is that the days of setting your price in total secrecy have come to an end. People deserve clear answers, and oil companies must be transparent to the people of British Columbia. If there is any reason for charging British Columbians a 13-cent premium more, prove it. Just prove it. That's what any good business will do to earn the respect of the people of this province.

We are changing the rules of the game to make the oil companies more accountable, more transparent, to the people of British Columbia. This act will allow the B.C. Utilities Commission to collect more information, accurate information, so that we can make better decisions in the future. The information will be collected on refined fuel imports and exports, fuel volumes at refineries and terminals, as well as wholesale and retail prices. This information will be available to the public as well as customers and watchdog groups.

It is not a surprise that members on the other side are not happy with this bill. I've been listening to the members from the other side with interest since this afternoon. They are questioning the intent of the bill our government has introduced to make the oil companies more accountable to the people of British Columbia.

I completely understand that their hands are tied. Their hands are tied. They will not stand up for the people of British Columbia. They will stand up for the oil company, and here's why they do it. They do it because, after taking \$700,000 in political donations from major oil companies, the opposition continues to defend their friends in that industry and oppose any attempt we make to bring the gas prices down or make the gas company accountable to the people of British Columbia. That's the issue.

[3:05 p.m.]

The legislation will force the oil companies to come clean on the significant markups that are placed on the price of gasoline, including the 13-cent premium that those companies have refused to provide any rationale for. By pulling back the curtain, these companies will be publicly accountable for unfair markups and cost increases that cannot be explained to the people of British Columbia. It will produce a common set of facts moving forward, allowing us to properly evaluate

our policy and take other actions, if needed, to bring fairness to the price of gas at the gas station.

The Fuel Price and Transparency Act is an important first step, and I fully support this bill. I hope the members on the other side of the House will support this bill, because this bill is good for the people of British Columbia. It may not be good for the oil companies, but it's good for the people of British Columbia.

**R. Sultan:** It gives me great pleasure, on rather short notice, I must confess, to pontificate on gasoline prices. But I suppose if one were to pick out anybody in the Legislature who has a bit of history in this area, maybe I'd be the nominee, because I must confess that I have spent much of my life analyzing prices. I've taught prices. I've modelled prices. I've lectured about prices. I've advised about prices.

Some of my clients would include Murphy Oil, Atlantic Richfield and Imperial Oil. I was one of the advisers on the Mackenzie River gas pipeline which was going to go to the Beaufort Sea. I certainly got to know some of the big guys in the industry in those days. So if you're looking for somebody to put a label of big oil on or, at least, he's aware of big oil, I'm probably your best choice.

What I've learned over the years of research, teaching and business is that this is both a politically magic subject and also one where it's easy to be led astray by some simple-minded ideas. For example, the Premier, in his wisdom, said, "We're going to get to the bottom of this, and we're going to get the B.C. Utilities Commission to find out what is really going on. In fact, we're going to pass a law so there'll be no more secrets," as the previous speaker, my honourable friend, just pointed out.

Once all those secrets are revealed, then that will be a happier tomorrow. But by the way, in that analysis, don't look at government policies, and don't look at taxes. Well, that's unfortunate, because five minutes ago, my friend here just looked up what some of the taxes are on a litre of gasoline in British Columbia today.

Here's what you pay when you pull up to the gas pump. Provincial motor fuel tax, 1.75 cents in Metro. Provincial motor fuel tax everywhere else, however, is 7.75 cents. The B.C. carbon tax, 8.89 cents.

B.C. Transportation Financing Authority tax, 6.75 cents. TransLink tax in Metro, 18.5 cents. Transit tax if you live in Victoria, 5.5 cents. Federal excise tax, ten cents a litre. GST, 5 percent. Add it all up and the total taxes you're paying are easily 60 cents a litre.

Now what does a litre of gasoline cost today at the Esso station in West Vancouver? Well, it's \$1.359.

So not quite but almost a half of what you pay to put gasoline in your car is taxes, but if you're trying to understand why gasoline prices seem kind of high, you can't look at that subject. You have to just worry about the other half, which is obviously subject to all sorts of secrecy and skulduggery.

[3:10 p.m.]

Now, when we look at the secrecy and the skulduggery

side of the equation.... Let me also point out that the other forbidden territory for the B.C. Utilities Commission to explore, the secrecy and skulduggery side.... It could not look at government policies either. It's, to me, just.... I'm baffled. I'm flabbergasted that you would not consider, if you're trying to figure out the price of gasoline.... You would not be allowed to speculate or measure or estimate or collect secret data on the supply of gasoline. No, no, no. All we want to do is get a bunch of cost figures. Somehow this will give you the right answer and reveal the gouging that's going on.

At the core of the matter, prices are set by supply and demand. That's what economists are taught when we're still in diapers. On the supply side, we have a few problems here in British Columbia. In fact, if I can believe the media reports, our Premier is going to negotiate with our new Prime Minister to get a greater supply of gasoline in the existing Trans Mountain pipeline, the twinning of which, by the way, this government, the government we're looking at right now on the other side of these chambers, is committed to stopping with all available tools. "But, by the way, give us a little bit extra of that capacity because we need more gasoline here." It has finally sunk in that we have a supply problem.

Alberta and the refiners in Alberta are part of the solution, presumably. But they're on allotment. There's only so much capacity in the pipeline, and I'm sure it's all spoken for. So good luck, Premier, with your negotiations with Mr. Trudeau. After all, it's his pipeline now. It's our pipeline. We own it collectively as Canadians.

The other source of supply, of course, is our friends in Washington state. They're very quick to complain about all of the oil tankers in prospect going through the Strait of Juan de Fuca, bumping into the orca whales and doing all sorts of ecological damage, conveniently ignoring the three, four or five multiple of tankers feeding the refinery complex just south of the border at Anacortes.

Who is one of their major customers? It's us in British Columbia. They bring in their crude from Alaska, refine it and sell part of it to us. I suppose we could say, "Well, please ship more up here," but it's an integrated supply chain. They'll sell us, at a price, what they think we will pay. If you want to bring antitrust action against the pricing behaviour of those American refiners down at Anacortes, well, lots of luck. Better people than we have tried to do it in the past, and the results have not been very successful.

Indeed, I was put in charge of the energy group at the Royal Bank of Canada back in the late '70s, because we were fed up with being hosed by very high oil prices which were creating huge problems for the economies around the world, and we weren't going to put up with it anymore. OPEC, the cartel, an openly proud combine of all the major producing oil nations, said, "We're not going to undercut one another's prices from now on. We'll all going to get together and stick it to the customers," and they did.

Our Prime Minister of the day, the other Mr. Trudeau, said: "I'm not going to put up with this. I'm going to start my own oil company." He purchased a company, relabelled

it and called it Petro-Canada. Needless to say, Petro-Canada wasn't a very popular head office in Calgary, where I lived and worked in those days, but they gave it their best shot.

Unfortunately, the president chose to continue to live in Ottawa. Bill was his first name. He would fly every week, on Monday, to his job in Calgary, and then on Friday afternoon, he'd fly back to Ottawa. You might say he chose to not become part of the oil patch. We'd sometimes wonder how long Bill Hopper would hang onto his job, and frankly, it wasn't very long, because Petro-Canada was a big flop.

[3:15 p.m.]

There are still some bedraggled Petro-Canada retail stations around. I never go to them. I find them.... Maybe I have been indoctrinated too much by my Calgary experience. But are they going to sell gasoline any cheaper than anybody else? Not that I've noticed, because this is a supply-and-demand situation, and the retailers of gasoline, the wholesalers, the whole supply chain, are going to try and maximize their earnings.

Wow, some people would call that gouging. Other people would call it the free marketplace. And how do you stop that from happening? Well, you flood the market with new supply. You say: "We need another pipeline from Calgary. Get on with it. Twin that line, Mr. Trudeau. We're desperate here. Our customers are paying too much to get around every day in their automobiles."

I'm afraid that I'm not a big fan of this bill, which seems to be based on the premise that if we could only find out all of their costs, up and down the line, at every stage of the process, we will somehow find the gouging element and bring pressure to bear to cut it out. "We're on to your game. We have the numbers right here. You just reported it to us last week."

That raises the next question. Let's say that we've got all of these numbers, and we find: "Wow, some of the margins are kind of fat." I think we all agree that they are. I mean, supply is in short supply. So why not jack up your prices? That's what business people do, believe it or not. So if prices seem a little bit on the high side, well, I would ask: what does the government then plan to do about it? Call them in and say: "Well, there's a \$1 million fine in this legislation, you know. We're going to get even with you guys"?

I don't think they would say that, actually. They would somehow contrive an argument that it's your moral responsibility to cut down those margins. But the problem is that there are so many outlets, so many avenues of distribution, that this whole gasoline supply-and-demand network really is such a complicated network that to assume that somehow you can control any one element of it without controlling the whole thing is somewhat far-fetched.

The question boils down to: is this government, when it gets all of this data, really prepared to control prices? Because if you don't control prices, they're going to find their natural level, as they have for these many years. So I assume that the hidden agenda here is price control.

Those of us who lived through Mr. Trudeau's wage and

price control era know how that worked out. It didn't even last a year. It was very unpopular with the voters. And of course, while many of us, as consumers, liked the price control part, particularly when we talk about gasoline, to suggest that our wages would simultaneously be subject to government control.... Well, I don't think that is consistent with the speeches I've heard in these chambers over the last two or three days about free collective bargaining.

This is the problem. Once you start tinkering with one little element of this complex supply-and-demand network, where do you stop? I think you've got to go all the way and say: "We're going to control everything." I know there are some ideologues in the Premier's office who believe that we actually should. That's their doctrine. We see lots of evidence of it creeping into legislation here, there and everywhere, as we go along.

I am skeptical that in today's competitive marketplace, these endeavours to control the price of gasoline through government diktat, right here in British Columbia, can survive. Because we are embedded in the global economy, and if there's an opportunity to do so, people will bring, you know, bootlegged supplies in from Bellingham or somewhere, or somebody will figure out a way to ship more refined product into Prince George. The marketplace defeats attempts by the government to control everything.

I've got to say that I'm not a big fan of price control, even though Mr. Trudeau senior gave it his best shot. He had to retreat. Even Bill Hopper eventually flew back to Ottawa and never did come back. So that was the end of the Petro-Canada experiment as well.

[3:20 p.m.]

Having said all of that, let me put on my scholarship hat and admit that for many, many years, economists have advocated that if we are going to have a market-driven economy, we must have a competitive market economy. Now, that's our doctrine. To a degree that really surprised me, I discovered that our friends — academics, analysts, economists — south of the border spent a lot of time in the day thinking about the elements of a competitive economy, and having many competitors and many purchasers was fundamental.

When you got into a situation where there were only a few competitors perhaps selling to only a few customers, the rules of the game changed, through human behaviour, to say: "Well, look, I'm not going to actually tell you what I'm planning to charge, but it wouldn't be surprising to me if there was like a ten-cent price increase next week. But this conversation never took place." That goes on all the time in business. We should not be naive.

The common structure in many businesses today is not pure and perfect competition, as the economists defined it — you know, a multitude of sellers and a multitude of buyers. It's characterized by a few buyers and a few sellers, a higher degree of concentration.

One of the secrets of the American economic success in this century, I think, was they actually passed laws prohib-

iting anti-competitive behaviour. They passed laws outlawing monopoly. It was and still is, under the Sherman Act, a criminal offence to monopolize in the United States. If we ever had anything like that in Canada, well, I don't know. People wouldn't know what you're talking about. But it has been, over the years, an element of faith in how the capitalist system in the United States operated. Of course, we get the spillover benefits up here.

Unfortunately, as I intimated a moment ago, the structure of many, many American markets.... Let's look at software. Let's look at computers. Let's, for that matter, even look at basic crude oil production. There's a great tendency to a greater degree of concentration, and when you get a greater degree of concentration, you get a few people looking at one another and saying: "Well, here's what I think we should do. I don't know what you're going to do, but here's my plan." They say, "Well, okay, maybe that's not such a bad idea after all," and anti-competitive behaviour creeps in.

The purpose of my little diatribe here today is not to suggest that there is no anti-competitive behaviour in British Columbia. I think Canadians are quite used to it. It's perhaps the norm up here. I think the idea of pure and perfect competition is quite anathema to many Canadians, frankly, having worked on both sides of the border. To suggest that the gasoline market maybe has some elements of anti-competitive behaviour in it would not terribly surprise me. The fact is I think BCUC has already revealed some unusually large margins.

So what are you going to do about it? Well, I think I've already made my case that trying to control those prices is a mug's game. Getting greater supply is the market-driven solution, and you're back to calling up Mr. Trudeau and saying: "Get on with twinning that line. We need that refined product here right now. We don't have too many places to build a great big new gasoline refinery in the middle of Vancouver. We'll probably debate the permitting for that until the cows come home, so forget about it. But you run that refinery in Alberta, and we'd be glad to buy your gasoline."

I think that's the solution to the problem. This idea that somehow we can pass a law requiring them to produce thousands and thousands of pieces of information, probably weekly and maybe even daily.... Well, I hope we buy several great big new computers to handle it all. Then you'd better hire another 25 or 50 economists to look at it and figure out what it all means.

Then, once you find out what it means, what are you going to do about it? Are you going to call somebody up and say: "Hey, we think your prices are kind of high in Salmon Arm. I'll hope to see you lowering them next week"? They probably would, and then as soon as you turned your attention somewhere else, they'd put them back up again.

[3:25 p.m.]

It's a mug's game. You cannot control all of the prices in the economy, and you cannot control the prices of gasoline unless you control almost everything you can imagine. It just doesn't work. That was demonstrated by Mr. Trudeau under

wage and price controls in the late '70s. The whole thing collapsed in short order.

I think the thin edge of the wedge apparently seems to be somebody in the Premier's office who thinks that with all of this data flowing in by the terabyte, we can somehow control prices in British Columbia. Give your head a shake. This is a market economy. And like it or not, I don't think we are going to become unique in the world and have a different structure of how we buy and sell gasoline. We are more or less destined by fate, I think, to be similar to how they do it in the rest of the world.

It's very unusual. I think it probably makes good politics. "Hey, we're trying." Come back to the idea that half the price is taxes. But we can't look at that. "Oh, I'm sorry. That's off-limits." And supply policy? "No, no, no, you can't look at that either."

Here's poor old BCUC. They're trying to do their job and not get fired, and they produced this report saying: "Well, there seem to be some anomalies here. We don't understand why they exist." I know why they exist. They exist because they can exist, because that's what supply and demand allows them to do.

If we don't like it, well, the simple option, to me, is staring us in the face. Let's crank up supply. Let's flood this market with gasoline. There will be so much cheap gasoline for sale, electric cars won't have a chance here for another ten years. Tell Mr. Musk to go peddle his papers in his new pickup truck. They're not going to have a chance here, because the cheapest thing you can do is buy gasoline in British Columbia. Wouldn't that be great.

So that's my advice. Thank you very much.

**Deputy Speaker:** Seeing no further speakers, the minister shall close debate.

**Hon. B. Ralston:** I want to thank the members who participated in the debate, a very lively one. I'm very much looking forward to committee stage, given the range of questions that appear now to be on the table.

With that, I would ask that we move to the vote.

[3:30 p.m.]

[Mr. Speaker in the chair.]

Second reading of Bill 42 approved unanimously on a division. [See *Votes and Proceedings*.]

[3:35 p.m.]

**Hon. B. Ralston:** I move to refer the bill to Committee of the Whole House at the next sitting of the House after today.

Bill 42, Fuel Price Transparency Act, read a second time and referred to a Committee of the Whole House for consideration at the next sitting of the House after today.

**Mr. Speaker:** Members, we'll take a five-minute recess, please.

**R. Leonard:** I seek leave to make introductions.

Leave granted.

### Introductions by Members

**R. Leonard:** I'd like to introduce to the House the class from Mark R. Isfeld High School in Courtenay. Students from the whole Comox Valley have come down here today with their teacher, Heather Beckett, and — I don't know how many — five other chaperones, I guess. I just hope that the House will make them feel very welcome as they watched an historic moment. Unanimous.

**Mr. Speaker:** Members, we are now recessed. We'll be back in five minutes.

The House recessed from 3:36 p.m. to 3:40 p.m.

[Mr. Speaker in the chair.]

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

**Hon. M. Farnworth:** In this chamber, I call continued committee debate on Bill 41, United Nations declaration act.

### Committee of the Whole House

#### BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT (continued)

The House in Committee of the Whole (Section B) on Bill 41; R. Chouhan in the chair.

The committee met at 3:43 p.m.

On section 2 (continued).

**M. de Jong:** When the division bells rang, the minister was in the midst of delivering an answer to my last question relating to the First Nations Forestry Council.

The part I clearly heard was where he indicated that, based on the available information, he thought and communicated that the B.C. First Nations Forestry Council would not qualify as a governing body within the meaning of subsection 2(c). Then I thought he gave some helpful rationale for that, but the bells were ringing and we started to move, and I didn't clearly hear what some of that rationale was.

Perhaps he could, in this new setting, in this new chamber, confirm what he said about the forestry council not representing a governing body within the meaning of subsection

2(c) and some of the rationale that would determine whether or not a group or agency was a governing body.

[3:45 p.m.]

**Hon. S. Fraser:** I guess, just to repeat in the new chamber here.... At this point in time, we do not view the First Nations Forestry Council as a governing body. The legislation, Bill 41, that's before us will allow Indigenous peoples to determine what governance structures best represent their nation when entering into agreements with the province.

Existing Indigenous governance structures such as treaty nations, for instance, Indian Act bands, tribal councils, etc., can remain. It also means we can work with other forms of government chosen by nations' citizens, such as collectives of nations or hereditary governments.

This supports the nations doing the work of rebuilding their nations and governments and supporting self-determination and also supporting self-government.

**M. de Jong:** I think the last question on this point. Again, using the First Nations Forestry Council as an example, would the government and the minister be looking for something specific as an indication that First Nations themselves have conveyed a willingness to have a body such as the forestry council elevated to governing-body status? Would that require band council resolutions on the part of membership First Nations?

Is it possible for an agency like the forestry council to graduate, if that's the right word, to governing-body status and, if so, what indicators would the government be looking to for confirmation that that term can legitimately be applied and that status can be applied to an agency like the forestry council?

**Hon. S. Fraser:** The legislation actually provides some room for government to recognize other types of governing bodies. So that opens up the space to do that.

For the province, the two key factors in recognizing an Indigenous government for the purposes of this act will be confidence that the constituents of the Indigenous government have freely agreed to this representation — that would be one key factor — and that the government has the capacity to work under this act, to participate in the process and to be accountable for any decisions that are made.

Section 2 approved.

On section 3.

**M. Lee:** I appreciate the discussion we've been having and the manner in which we had it on section 2. I'd like to invite the minister to work with the member for Abbotsford West and myself through section 3.

This is a very important section of the bill, and it has some key considerations as part of it. Let me just start at the back of the wording here. There is an obligation here on govern-

ment to "take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration." We've spent quite a deal of time understanding the articles of the declaration.

There was, at times, through that discussion, an acknowledgment by the minister that there may well be existing statutes in the law of British Columbia that may not be entirely consistent with the declaration. I'd like to come back to that point with the minister and first ask, to start on this section: what assessment has the government done in terms of what current laws, statutes, regs or otherwise, are not consistent with the declaration?

[3:50 p.m.]

**Hon. S. Fraser:** Thanks to the member for the question. We've not done the law-by-law assessment, if that's the right term to be used here. This will be the work that we will embark on with Indigenous Peoples as part of the action plan. The priorities will be set here and in its course, recognizing by all that this will take time.

**M. Lee:** I appreciate the response from the minister and the fact that this may well take time. Does the minister see this as an immediate obligation of the government when the words say that "government must take all measures necessary to ensure the laws of British Columbia are consistent with the declaration"?

Perhaps I can ask the question two ways. One is: is that an obligation of this government first? Secondly, is that an immediate obligation of this government? Thirdly, if it's not immediate, in what time period would the government be meeting this requirement?

**Hon. S. Fraser:** The priorities and the pace of the work will be set out in the action plan. We didn't prescribe that as such. This work will be expected to take time. Bringing laws into alignment with the UN declaration won't happen overnight. It will be generational work.

**M. Lee:** The minister has made reference to generational work. I know, even in the technical briefings, we heard words to that effect. Just to confirm, how does he define the time period of generational work? Is that, say, 20 to 30 years?

**Hon. S. Fraser:** We have not set a time for this. What we have set is a plan to move forward with priorities with Indigenous Peoples. We know it will take time. What we've developed here through Bill 41 is a very orderly and transparent process to proceed, and I'm excited to be embarking on that work.

**M. Lee:** I appreciate the need for transparency and the need for clarity and understanding. That's why the time that we spend at this committee stage, the five days that we're taking, is the opportunity for us to have that transparency to the extent that we have it, meaning to the extent that we under-



stand from the government the way in which, the manner in which and the timing in which the declaration will be implemented.

Let me just come back to a point around consistency though. We've talked at length in the discussions around the articles that.... In the government's view, it will take a meaningful exercise to work with First Nations and Indigenous Peoples in a consultative and cooperative way, which is the lead-in language to this section.

[3:55 p.m.]

Who decides and makes the determination as to when a law of British Columbia is consistent with the declaration, knowing that the declaration article which a law might be compared against, is to be defined between at least the government and the relevant "Indigenous governing body," First Nation or others who are authorized to have that discussion about a particular article? Who, at the end of the day, will determine whether government has satisfied this obligation?

**Hon. S. Fraser:** The workplan anticipates us working together with Indigenous Peoples, as was suggested by the member opposite. That's how we'll work collaboratively to determine what the priorities are, which laws are providing impediments towards reconciliation, that sort of thing. That's how we'll determine the priorities.

**M. Lee:** I appreciate that there is a need to determine priorities, and we will get to that in terms of section 4.

What I'm really asking the minister, though, here is on the process which government will be embarking on as this bill gets passed. It is a cooperative process, the way this has been framed in this section 3. When will government know that it has met the obligation, set out in this section, to ensure that "the laws of British Columbia are consistent with the Declaration," if the articles themselves and their meaning — and their application, meaning to British Columbia laws — are yet to be determined?

I'm asking the minister when the government will have determined that it's reached that point.

**Hon. S. Fraser:** In answer to that question, possibly I can give an example or two of how that will work.

The Environmental Assessment Act was determined by our work, the Minister of Environment's work with Indigenous Peoples in the province, and where barriers were seen to be in place, to move forward in a collaborative way with environmental assessments that reflect respect and recognition of First Nations in a territory where work was going to be done or projects were going to be done — again, collaboratively. That is how that act was modified and amended to reflect the values within the UN declaration. It would be that sort of pattern that we'll follow.

I guess I could go to a more fundamental example. That might be how a collaborative process arrived at a new piece of legislation in this House, known as Bill 41, which we are in

committee stage of right now. It was done in a different way, not one that was prescriptive by government.

This was done in collaboration with First Nations. The First Nations Leadership Council, through resolution of all their members, individual nations, had a mandate from Indigenous people in this province to actually move forward, for First Nations to move forward, on working collaboratively in a different way with government, based on a respect-and-recognition relationship.

That is actually how it's got us to this place today, on Bill 41. It's exactly, I think, the pattern. Those two examples will show just how, exactly, this will work.

**M. Lee:** Well, let me just try and go through another section of this section, which is the term that's utilized: "all measures necessary." Can I ask the minister to explain, on behalf of the government, what that test is?

[4:00 p.m.]

**Hon. S. Fraser:** It would involve introduction of legislation, if there's new legislation, or amendments to existing legislation.

**M. Lee:** It certainly would involve that, you would expect. In terms of.... We've talked about this bill being applied, so to speak, on the laws of British Columbia going forward. The minister made it very clear that in response to many of the applications, let's say — interpretations of the articles of the declaration — it would be on a go-forward basis. For example, in areas of redress.

In terms of amending existing laws, perhaps I could ask the minister to elaborate more, in terms of what expectation he sees on behalf of government. Again, when we're talking about all measures necessary, is that a review of eventually all laws of British Columbia?

**Hon. S. Fraser:** We will work with Indigenous peoples to identify the priorities and which laws are most important to amend or change. Or if there are new laws, new legislation coming forward, then we'll work with them on those to make sure that the measures we do take to align laws with the declaration are consistent with that action plan and the priorities that we work with them on.

This, of course.... Section 3 is specifically entitled — the measures to align laws with the declaration. Those measures are new legislation, in some cases, and the amendments of existing legislation. Those are specifically the two tools that we have at our disposal.

**M. Lee:** I appreciate that we will be talking about the action plan and the priorities of the government with First Nations leadership in this province. But section 7, with respect, does not read with any limitations on it. When we talk about "all measures necessary," and it says "to ensure the laws of British Columbia are consistent," that will suggest

that whether it's reasonable or otherwise, this government has the obligation to use all measures necessary.

This means from any considerations, including considerations from a cost point of view and other priorities of government, presumably. That is what is required here in order to ensure that the laws of British Columbia, and not just some laws of British Columbia, are consistent with the declaration. Is that the case? Am I reading this section correctly?

**Hon. S. Fraser:** I'll take a stab here. The requirement to align laws in consultation and cooperation with Indigenous peoples means that government will have to work with First Nations, treaty nations, Métis and Inuit to determine the best way to seek their input.

Then what we have available to us as government, the means to do that, will be through new legislation, consequential amendments — those things. Of course, they would all come back to this House, also, in the interests of transparency. I think it's part of the....

The member cited section 7. I'm assuming he meant section 3, if I'm correct. I just couldn't see the link on section 7. Thanks.

**M. Lee:** That's quite right. I intended to say section 3. So to the extent that I referred to section 7, it was section 3. Thank you for that.

[4:05 p.m.]

I know that as we look at the declaration itself.... We talked, as well, at committee stage yesterday.... I referenced the Haida decision in the sense of where consent is not necessarily required in every case on asserted rights and title, according to the court in that decision.

We look at, as a specific way of example here, this government taking all measures necessary to ensure the laws of British Columbia are consistent with the declaration. Is it intended that the government will read in — for example, in this case — recognizing that there is a distinction as we look at the term "consent" and how it's applied, how it is applied differently on territories over which there is asserted title versus traditional territories over which title has been determined through treaty or through the court, as we discussed yesterday? Is that the case?

**Hon. S. Fraser:** The revitalization, I think, of the Environmental Assessment Act is an example how a law in British Columbia can align with the UN declaration, in consultation and cooperation with Indigenous peoples in British Columbia.

The act sets out a collaborative decision-making process within the act that includes the addition of an early engagement phase designed to ensure all parties can understand the proposal from the early stages of the regulatory process, consensus-seeking requirements throughout the process on key process steps with Indigenous nations, and a new dispute

resolution opportunity during key phases of the assessment process to promote consensus-seeking.

It's really a perfect example in answer to the question.

**M. Lee:** With respect, I don't believe the minister is actually answering my question. I appreciate the response, and I understand the response in terms of the process and consultation and cooperation. All I'm trying to take the minister back to, in the context of section 3, is to the discussion we've been having the last number of days — in effect, that the application of the declaration in terms of British Columbia law would be through the lens of section 35 jurisprudence.

I'm just giving a specific example, which we discussed yesterday, that when we talk about ensuring the laws of British Columbia are consistent with the declaration, there are actually words that we have utilized by way of explanation that we are hearing from the minister through the course of the last number of days in committee stage.

I am looking for an acknowledgment from the minister that, again, when we talk about.... Just to pull it back to the level of the section, when we say "the government must take all measures to ensure the laws of British Columbia are consistent with the Declaration," it could go on to say, "to the extent that such measures continue to be consistent with the Canadian constitution, the legal framework and section 35 jurisprudence."

I'm not asking the minister to confirm the exact wording of that qualification, but I would like the minister, based on our discussion over the last number of days, to at least acknowledge that that would be an appropriate qualified understanding as to how section 3 should be applied.

**Hon. S. Fraser:** Just to confirm that everything that's within Bill 41 is within the Constitution of Canada and section 35. For certainty, nothing in this act nor anything under this act abrogates or derogates from the rights recognized and affirmed by section 35 of the Constitution Act, 1982.

[4:10 p.m.]

**M. Lee:** Well, I will just take the minister's response as a further indication of the discussion we've been having to recognize the confines in which the declaration will be utilized and the process that the government will be following with First Nations.

I want to make one last point and then turn it over to my colleague, the member for Abbotsford West, on this section. That is that a great deal of the discussion we've been having with respect to reconciliation, of course....

As we look at section 3, as to how it will be applied, I would also ask the minister to acknowledge that under section 35 jurisprudence, there certainly has been guidance given by the courts, which we talked about yesterday, that the final responsibility, from a decision-making responsibility, lies with the Crown, but also that in exercising that responsibility, there is a need for the Crown to take into account the

broader social, political and economic interests. In this case, it would be for the entire province.

Those words are not also in this bill. They're not in the declaration. But by virtue of the acknowledgment of this minister, on behalf of the government, that the implementation of the declaration in British Columbia under Bill 41 will be done consistent with the Canadian constitution and legal framework and section 35 jurisprudence, that particular point of guidance from the courts would also apply. I would just like the minister to confirm that as well.

**Hon. S. Fraser:** I will confirm that everything in Bill 41 will be consistent with the constitution.

I think the member used the term “confines,” and I think the more accurate phrase would be “the opportunities.” I believe Bill 41 and the constitution of Canada together provide great opportunities for us to work together in a way, with respect and recognition, recognizing rights and title. That sort of thing will move us in a way to bring more certainty and predictability to the province, to make us a more just province also. I don't see the constitutional context or section 35 jurisprudence context as a confine. I see Bill 41 within that as a real opportunity here for British Columbians.

**M. de Jong:** Just a couple of things that flow from the conversation my colleague from Vancouver-Langara was having with the minister. There are two phrases that have been the subject of some conversation so far, the first being “take all measures necessary” and then the second, “the laws of British Columbia,” contained within section 3.

In his presentation to the senate committee, Professor Newman — I think it was Professor Newman, and I am relying on my memory now — I believe, drew the Senate committee's attention to the fact that in his view, “all measures necessary” was a phrase heretofore unknown in the statutes of Canada. Is that a phrase that has been used in any other statute in British Columbia?

[4:15 p.m.]

**Hon. S. Fraser:** To the member opposite, thanks for the question. I haven't done an analysis of all the laws on the books in the province. But to be clear, as it relates to Bill 41, there are two mechanisms available to us: the creation of laws or the amendment of laws.

**M. de Jong:** Right. Well, I'll come back to that in a moment in the second part of my inquiry of the minister. Has the phrase been judicially considered anywhere in Canada — the phrase “take all measures necessary”?

**Hon. S. Fraser:** We're not aware of it, but again, there are only two measures available to us.

**M. de Jong:** Again, I'll come back to that qualifier that the minister has just offered.

In our discussion earlier today, the minister, I think properly, pointed to the limitations that governments are confronted by and are obliged to contend with as they move forward with public policy initiatives. The one he mentioned was budgetary and the present government's stated desire to govern within the context of a balanced budget. In fact, there are statutory provisions that require that.

My interest in the phrase “take all measures necessary” relates to whether or not, in the context of this legislation or any other, some of those limiting considerations are being stripped away from government.

In the face of a phrase that says “take all measures necessary,” is it still open to a government — any government, not just this government — to assert that, for example, there are budgetary considerations that preclude us from doing more even though we want to? Or does the language utilized here preclude that kind of argument from being advanced because it requires the government, quite simply, to take all measures necessary?

**Hon. S. Fraser:** Just to be clear, there is nothing in the bill that takes away our ability to balance our budget. The work is expected to take time, and bringing laws into alignment with the UN declaration won't happen overnight. As I mentioned before, it's been described as generational work. I look forward to that work done collaboratively with Indigenous peoples in this province, as we have done to actually create this bill, as we have done through the Environmental Assessment Act.

**M. de Jong:** All right. Well, I'll put this scenario. Then I'll move on, and the minister can, I hope, comment.

In the months and years ahead, a First Nation is confronted by a piece of legislation — maybe it's historic; let's assume it's historic legislation that is on the books now in the revised statutes of B.C. — that it believes is inconsistent with the provisions of Bill 41 and the spirit of the declaration, and it leads to judicial interpretation of that question.

The government's reply is: “We don't wish to quarrel that point. We merely wish to point out that this is an onerous task that we are embarked upon. We have limited resources, and we are doing the best we can to move through the updating process.” I think this is, so far, a plausible scenario for me to lay out.

[4:20 p.m.]

It is then confronted by a query from the court, in this instance, that says: “Well, counsel, that's all very well and good, but we presume the Legislative Assembly meant something when it said, ‘Take all measures necessary,’ and that didn't include, in our view, asking this First Nation to wait two, three or four years. You clearly don't have the resources you need. The Legislative Assembly has said, ‘Take all measures necessary.’ Therefore, you are obliged to do so.”

That is an argument I can envisage being advanced with respect to the phrase we are dealing with. My sense is the

minister disagrees with me, from the earlier answer, but I am curious to know his response.

**Hon. S. Fraser:** While I might disagree with the member's characterization here, this work that we're embarking on, the process, will be done in consultation and collaboration with Indigenous peoples in British Columbia. I mean, that's part of the bill. That is the next step here. I think that will clarify things as we move forward.

**M. de Jong:** With the greatest respect, I'm not sure it does, but I think I have offered my query and perspective, and the minister, his.

The second part of the section that I just wanted to take a moment to ask the minister about is that phrase "laws of British Columbia." On several occasions just now, the minister has pointed to the introduction of new laws and amendment of existing laws, or words to that effect. At least that's my recollection.

Not to cause the minister more grief, but I'm going to make a proposition for his consideration. The laws of British Columbia certainly include the body of statutes that are on the books presently in the revised statutes of B.C. and any new laws that might be added to it and the updating an amendment thereof. But does the minister agree that the laws of British Columbia also, for the purpose of this legislation, Bill 41, include every single OIC on the books and every single municipal bylaw? Am I correct?

**Hon. S. Fraser:** This does not apply to municipal bylaws and that sort of thing. OICs could apply, yes. Regulations could apply. The priorities and the pace of the work will be set in collaboration with Indigenous peoples.

**M. de Jong:** Well, that's instructive. So the minister agrees that the vast body of orders-in-council regulations that are enacted by the province are captured by this, and the magnitude of the task is multiplied accordingly.

[4:25 p.m.]

I'm surprised to hear the minister say that the laws of British Columbia.... Insofar as municipalities are subordinated, delegated jurisdictions don't have any independent sovereignty of their own — take their authority from this Legislative Assembly. I am a bit surprised, quite frankly, to hear him say — and First Nations may be a bit surprised to hear the minister say — that section 3 and Bill 41 do not capture laws passed by those delegated authorities that are municipal councils around B.C.

If that is the advice and the position of the minister, I will accept that, but I am a bit surprised to hear that.

**Hon. S. Fraser:** That is correct.

**M. de Jong:** A final question, then, on section 3. Just in the interest of time, I'll try to summarize.

We had a conversation earlier, when we were going

through the articles of the declaration itself. I don't want to repeat that, but the impression I gained from that conversation is that with respect to the work that needs to be undertaken with respect to section 3, at this point in time, there has been no analysis undertaken of what the costs of that represent in terms of additional resources, additional draftspeople that might be required.

There's been no budget set at this point in time. There's been no Treasury Board submission. We've just determined that the work is not just the statutory volume but the vast array of OICs that are captured by the requirements of section 3.

Have I correctly stated that — that there is no analysis around the cost of that work and no budget allocated at this point in time to undertake that work?

**Hon. S. Fraser:** The priorities and pace of the work will be determined in working collaboratively with Indigenous peoples, and it will take time. There is no.... We're not putting a time limit on reconciliation. Reconciliation is about evolving our relationships in a way that will be a benefit to all in British Columbia, so it's expected by all that this will take time and that there is no time limit on it.

As this process develops, if there are costs associated with that, that would become part of the budgetary considerations in the future.

Section 3 approved.

On section 4.

**M. Lee:** Let me just first ask the minister. Section 4(1) of the bill refers to an action plan to achieve the objectives of the declaration. Could the minister outline to us what the objectives are in the declaration?

[4:30 p.m.]

[J. Isaacs in the chair.]

**The Chair:** Minister.

**Hon. S. Fraser:** Thank you, Madam Chair. Welcome to the proceedings of Bill 41.

The term "objectives" is not used in the UN declaration, but I would suggest that you can imply the intentions from the articles that we've been discussing over the last five days.

**M. Lee:** I think, at least from the time that we've had together, we have, at least from the government's understanding at the current time, what those intentions might be.... But those intentions, as we've learned from the minister, are partly reliant upon First Nations leadership and Indigenous Peoples as to how they also see the meaning of these articles in the British Columbia context.

Again, when I was asking earlier about consistency with the declaration and not having a clear definition of what the

declaration means, there has to be a process that the action plan will speak to. Is there any concern here by the government that they're developing an action plan to achieve the objectives of the declaration when there are no explicit objectives in the declaration itself? As I'm hearing from the government, the aim of the action plan is actually to determine, arguably, what those objectives are. So it's a bit circular in nature in terms of this process.

Is there a concern from this government as to the challenge of knowing when it has met the objectives of the declaration, particularly in the eyes of First Nations leadership?

[4:35 p.m.]

**Hon. S. Fraser:** I think this process.... I don't have any apprehension about how this will work. How we developed this piece of legislation was a good example of how to work cooperatively and together and collaboratively. By doing that, by listening, by engaging with respect and recognition, as we've been doing throughout this whole process with Indigenous Peoples, is the path forward. It's our framework forward.

I mean, when we work together, when we collaborate genuinely with good intentions, with respect and recognition, the decisions we make.... We will get to them. We will get better outcomes.

**M. Lee:** Well, I think, just on the words of the minister as he ended his response: "We will get better outcomes...." I think we all want better outcomes in this province. The question is.... I'm just going to come back to this point. How do we know when we get there, though? How do we know what outcomes we're trying to achieve, particularly in the context of objectives of the declaration? That is the question that I'm raising with the minister.

He may choose to further comment on that, but let me ask this second question. When you look at subsection 4(1) of this bill, it could have focused on achieving the alignment of laws with the declaration, referring back to section 3, but it doesn't. It actually turns to the objectives of the declaration, which are not explicit. Can I ask the minister why that is?

**Hon. S. Fraser:** Thanks to the member for the question. These are two separate sections, 3 and 4. For section 4, the action plan is "to achieve the objectives of the Declaration," which, as we talked about before, is wider in scope and separate from the requirement to align laws in section 3.

Although the action plan could highlight work under section 3, or processes by which the work will be undertaken, they are separate sections.

[4:40 p.m.]

**M. Lee:** In the interests of when we began the review of the bill starting on section 2, after the length of time we spent on the articles, we talked about clarity and the importance of clarity at this time. In the interests of clarity, I want to take

this opportunity, then, to ask the minister.... The action plan that's spoken to in section 4....

First of all, could he confirm that the purpose of the action plan in section 4 is intended to deal with what is required under section 3?

**Hon. S. Fraser:** The answer is no. Section 4, while it could deal with alignment of laws in section 3, purposely could include other actions beyond that. It could be working together with First Nations to build more understanding around reconciliation. It could be around languages. There could be other things contemplated besides what is in section 3.

**M. Lee:** Well, let me just continue to understand how section 3 will be implemented, then, just because we just came off that section. I thought, through all the time we spent on the articles, that there was, certainly.... In fact, the minister referred to the need for consultation and cooperation with Indigenous peoples in terms of the individual articles themselves.

Again, if I could ask the minister: how will the alignment of laws with the declaration, pursuant to section 3, occur with Indigenous peoples? How will that process occur?

**Hon. S. Fraser:** It will be done by working with First Nations collaboratively, whether it's developing the action plan or whether it's aligning laws or whether it's other actions that could be contemplated. That's the purpose of Bill 41.

**M. Lee:** Well, I suppose, when we were talking about article 38 with the member for Abbotsford West.... There is an acknowledgment that "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures." Here, of course, the wording is "appropriate measures" as opposed to "all measures necessary."

[4:45 p.m.]

Let me just ask the minister that question as I look at this. Why is it that...? I'm utilizing this section, this article, in the context of the implementation of section 3 through section 4. I'm referring back to article 38, which we did cover earlier, and wording that's there, just as we look at how section 3 may be implemented in the context of an action plan, which I'm still trying to get to.

Just while I'm there and having this discussion, could I ask: why the difference in wording between what was referred to in the declaration as "appropriate measures" and now in the bill is actually "all measures necessary"? That, as my colleague the member for Abbotsford West described and discussed with the minister, doesn't appear to have ever been tested judicially by the courts. Why the higher standard that's being applied here?

**Hon. S. Fraser:** It's important that we have this debate to make sure that we're all crystal clear about what's happening here. In section 3, the wording is related to legisla-

tion, specifically to legislation. Section 4 is related to.... It's a broader scope there. But the scope of article 38 is broader than just legislation. They're different, right? There's a different intent there.

[4:50 p.m.]

**M. Lee:** Well, I think this discussion that we're having, for those who are interested, is another demonstration of how there's so much here. There is so much here in this declaration that needs clarity. It's the reason why, I'm sure, the government's view....

It will take time. It will take time for government and Indigenous peoples to come to an understanding as to how to move forward with this declaration. It's the reason why there still is an interpretative tool with the courts with no force and effect, and all of the things that we've been talking about.

I would suggest to the minister that when we're looking at this article, 38.... When you look at the article itself, as a two-liner, there's a lot that's there that perhaps overarches what the government is trying to accomplish in this bill in section 3 and subsection 4(1). So I do think that it's appropriate that the government consider my question as to why the government chose to impose on itself a higher standard.

I would suggest to the minister that the words "appropriate measures" are actually more akin to his answer to myself and the member for Abbotsford West. Appropriate measures, in the context of section 3 would be, presumably, to change existing laws — review and make amendments to existing laws — or implement new laws to ensure consistency with the declaration. Or as you implement new laws, ensure that they are consistent with the declaration. But I will leave that point there.

Just to make my other point, which is on article 38, and that is this. The reference to article 38 suggests that there is something that is needed by the state, in this case the provincial government, in consultation and cooperation with the Indigenous peoples, to take appropriate measures, including legislative measures. Here we're talking about "to achieve the ends of the Declaration," and that's very similar to "achieve the objectives of the Declaration."

One of the objectives, of course, of the government is section 3. This is how the government is wanting to proceed with the declaration. As we talked about under subsection 2(a).... We talked about the application of the declaration to the laws of British Columbia as being an interpretative tool by the courts. We talked about section 3, the operation of section 3, to ensure consistency.

We saw in section 6 and 7, an understanding that there will be agreements with Indigenous governing bodies, and the action plan that's spoken to in section 4 and 5. Those were the purposes of this bill. So I would've expected the government to say very clearly that the action plan that's contemplated in section 4 certainly must include how the government will ensure the laws of British Columbia are consistent with the declaration, particularly when it's to

be done in consultation and cooperation with Indigenous peoples.

This is a fundamental point that I want to draw out from the minister to confirm for further questions that we have on this section. First of all, again, I'd like to invite the minister to confirm that the action plan will address and deal with how section 3 will be implemented.

**Hon. S. Fraser:** The action plan in section 4 is intended to achieve the objectives of the declaration and can also include more than just legislative measures — for example, programs and policies as well.

[4:55 p.m.]

**M. Lee:** I appreciate that we're making a distinction here. The minister, in his response, made a distinction to myself. That is one response that I could be asking, but I'm not asking that question. I'm asking, specifically, on not the objectives of the declaration but, really, the objectives of this bill. The purpose of the bill we've described in subsection 2(a) — I summarized that for the second or third time in the last hour or so. So I think we have a clear understanding of what that purpose is. That includes implementing section 3.

I am asking this question because.... I have another point to be made here, but I need to establish, first of all, that the action plan will deal with the implementation of section 3. If the minister is suggesting that.... You know, there's one thing that the member for Abbotsford West had indicated a few days ago: we're trying to understand the intention of the government, but we're also trying to ensure that the language in the bill is clear — consistent with the intention of the government.

Again, unless.... I'm looking for confirmation, from this government through the minister, that section 4(1) includes an action plan that will relate to the implementation of section 3. I think it's a fairly straightforward question. It's one that suggests.... If the minister continues to refer to "the objectives of the Declaration," which is what the words say — and I understand that — is there something missing in this section that should actually say and also address how section 3 will be implemented?

**Hon. S. Fraser:** Madam Chair, I think I've been abundantly clear. Section 3 is about the alignment of laws. The action plan is to achieve the objectives of the declaration, which is wider in scope and separate from the requirement to align laws, in section 3. Although the action plan could highlight work under section 3, or processes by which the work will be undertaken, it doesn't have to.

**M. Lee:** Well, I guess in the discussion that we were having, the minister at various times, including even on section 3, referred to priorities of government or priorities as to how statutes would be reviewed — in what order, I believe, which laws of British Columbia might be reviewed, in cooperation and consultation with Indigenous peoples to ensure

their consistency with the declaration. I had assumed, in his response, that that would be something that would be laid out in the action plan.

What I'm hearing from the minister — and I appreciate that he's attempting to clarify this — is that the action plan may or may not include this. So I think I would urge the government to ensure that it does. But assuming that it does, let me just move to my next question.

In subsection 4(2), it says: "The action plan must be prepared and implemented in consultation and cooperation with the Indigenous peoples in British Columbia." That language, of course, is consistent with the lead-in language to section 3.

[5:00 p.m.]

Can I ask the minister...? I made a point earlier — at the end of the discussion of section 3, about guidance by the courts in terms of consideration of the broader interests by the Crown — that that is something that is necessary. Is there any contemplation in this action plan that government is considering to consult with other British Columbians and stakeholders in our province?

**Hon. S. Fraser:** I appreciate the question. Again, it's an opportunity for me. I just want to be very clear and get it on the record again that we have a clear commitment to engage with British Columbians, with local government, with stakeholders, business, industry, labour, as we have been doing throughout this process for many, many months.

**M. Lee:** Do I take it, from the response from the minister, that the action plan will include steps to detail out the need — action steps that are going to be taken as part of this action plan — to engage with stakeholders in our province, including the ones that the minister named, and British Columbians?

**Hon. S. Fraser:** We've been abundantly clear, I think, that we will work with British Columbians, with local government, stakeholders, industry, business, labour and others in a transparent way throughout this process. If there are issues of import that come up in the action plan, yes, that will all be happening.

**M. Lee:** Thank you for that response. One reference I wanted to read into the record, which is an acknowledgment of why that's important.... I want to just quote from page 8 of the Union of British Columbia Indian Chiefs report that was entitled *True, Lasting Reconciliation*, which said: "The government should undertake public education and outreach to raise awareness of the UN declaration in B.C., both within the public service and the general public."

[5:05 p.m.]

Obviously, there's been an important move forward to introduce the bill, and there was a very remarkable ceremony on the floor of the House a few weeks ago. But it's going to be very important that as the government moves forward with

First Nations with this action plan, there is that level of public engagement that the minister outlined the commitment of this government to do. It's for that reason that it will be important that the implementation of this bill, including section 3, is spoken to as part of that action plan and, therefore, part of the consultation.

Given the lack of certainty that I received in the response from the minister about my question to that, perhaps I could just ask the question one other way, then. In the context of the government agreeing about the importance of public engagement with stakeholders and British Columbians, even in the way that the Union of British Columbia Indian Chiefs had also recommended and called for — after all, reconciliation is about everyone in this province — will there be that same level of public engagement and consultation in respect of the implementation of section 3?

**Hon. S. Fraser:** There will be full transparency on both section 3 and section 4.

**M. Lee:** While we're on this section.... I appreciate that response from the minister. Just in terms of the action plan itself, has the government considered other opportunities for this Legislative Assembly to consider the plan as the consultation and cooperation process is unfolding? What is contemplated under subsection 4(4) of this bill is that the plan would be laid before the Legislative Assembly or filed with the Clerk of the Legislative Assembly if the House is not sitting.

Does the government not see the need to engage the other members of this Legislative Assembly in this process? Or is that something that also could be spoken to in the level of engagement that the minister spoke to just a few minutes ago in terms of stakeholders? Will there be an opportunity for members of this Legislative Assembly also to participate in that consultation process?

**Hon. S. Fraser:** I guess I'll read subsection 4(4) again just as context. "After the action plan is prepared, the minister must, as soon as practicable, (a) lay the action plan before the Legislative Assembly if the Legislative Assembly is then sitting, or (b) file the action plan with the Clerk of the Legislative Assembly if the Legislative Assembly is not sitting."

That is built in as the process for transparency so that this is brought to this place. I don't think it.... That's how it was laid out in Bill 41, as we're debating it. If it necessitates more work with this assembly, it doesn't preclude that happening, but this is the process that we have laid out in our collaborative work with the leadership council, with Indigenous people in the province, in the interests of transparency.

[5:10 p.m.]

**M. Lee:** Just a quick follow-on to that. My point, certainly, in referring to sub 4(4) is the lead-in language, which is: "After the action plan is prepared...." So I presume, of course, that the consultation that we're referring to is consultation

that would be held with all stakeholders in this province and British Columbians in the course of preparation of that action plan.

All I'm asking is whether all members of this Legislative Assembly will be given the same opportunity to participate in that level of consultation prior to the action plan being finalized.

**Hon. S. Fraser:** The plan here is to lay the action plan before the Legislative Assembly. That is the plan. But this will be a transparent and orderly process. It's going to take time.

**M. de Jong:** I think I'm being fair if I observe that over the course of the conversation that we've had over the last number of days, the minister attached a great deal of importance to the section and to the action plan. I think the minister attached importance to the action plan itself as a blueprint for moving forward but also to the process by which the action plan is arrived at and finalized.

Just a few specific questions about it. When will we see the first action plan?

**Hon. S. Fraser:** There's no date by which the first action plan must be tabled, and the consultation and cooperation with Indigenous peoples as it is developed will mean an action plan will likely not be finished for some months.

**M. de Jong:** Well, that's helpful. We are talking months, as opposed to years.

Maybe the better way for me to ask the question is: from the minister and the government's perspective...? Recognizing that it's work involving others, but also the legal obligation falls to the government in terms of the section we're dealing with and the requirement to prepare and implement an action plan, what would be a reasonable objective for the minister to lay out for the committee?

Would a reasonable objective be that the action plan be prepared and in a position for implementation over the course of the next four months, six months?

**Hon. S. Fraser:** I can't say precisely the time. But I think we are talking months. So we can get that specific. We want to do it right, with meaningful involvement with Indigenous peoples in the development. We're getting started with that work right away. That's the plan. But I cannot pin it down to, you know, how many months. But we are talking months, not years.

**M. de Jong:** Who signs off on it for government?

[5:15 p.m.]

**Hon. S. Fraser:** While we do this in collaboration, I would be responsible for tabling it here.

**M. de Jong:** I take that as meaning the Minister of Indigenous Relations would be responsible for signing off and

presenting the action plan in accordance with the provisions of the bill and section.

**Hon. S. Fraser:** I've been instructed that I probably mispoke. "The minister responsible" would be the appropriate response.

**M. de Jong:** Will the action plan take the form and have the authority of an OIC pursuant to section 9?

**Hon. S. Fraser:** That would be a negative.

**M. de Jong:** Because this is something the minister has frequently alluded to, will the action plan include a schedule of statutes and OICs to be dealt with in terms of the priority assigned to them?

**Hon. S. Fraser:** Keeping in mind that we haven't built the action plan yet, it could include priorities, alignments of laws from section 3.

**M. de Jong:** Does the minister see merit in the idea of laying out, at least in the initial action plan, a prioritization of the statutory instruments that the government would be applying itself to update in accordance with the terms of Bill 41?

**Hon. S. Fraser:** It's fair to say that that could be part of the work we do with our Indigenous partners here. But this is being done in collaboration, so I don't want to preclude or be prescriptive here.

**M. de Jong:** Okay. Well, let me try it this way with a far more open-ended question. The language and the desire to create the legal obligation for the action plan was, I presume, the product of a conversation with Aboriginal partners, as the minister has described. What was in the minds of the minister and those with whom he consulted when he decided to include section 4 and the requirement for an action plan? What should we look for in general terms with respect to the action plan?

[5:20 p.m.]

**Hon. S. Fraser:** As the member would well know, there were some of the existing priorities set out in the commitment document, back from 2015. It was begun by the previous government, and we continued with some of that work. So the commitment document and concrete actions — that work was underway, as well as the existing agreements and the commitments that we will draw on as we work to develop the action plan.

Examples. Again, without trying to be prescriptive here, general examples: actions related to governance building, engagement with British Columbians around reconciliation and what we are doing as a new approach, new approaches to negotiations, dispute resolutions. Those sorts of things



could certainly all be examples of what could be contemplated within the action plan.

**M. de Jong:** Well, I mean, it sounds like the message here is largely wait and see. So we'll wait and see.

Subsection (2) of section 4 makes it clear that there will need to be consultation and cooperation with Indigenous peoples. The minister, to be sure, has emphasized that fact throughout these discussions.

My sense is that much of the work that took place, much of the consultative work that took place, around the creation of this document — this document being Bill 41 — involved work between the government and the First Nations Leadership Council.

My question to the minister is: is that what is contemplated moving forward? I'm going to anticipate the minister's reply, which is perhaps sometimes unwise, but the minister is going to say: "We intend to consult with as broad a range as possible."

We are talking about a document, an action plan document. It strikes me that if it is the minister's intention to consult with 203 First Nations across B.C., certainly this is a good place to say that.

[5:25 p.m.]

If, on the other hand, what is contemplated is an engagement along the lines of what took place with Bill 41 itself, this might also be a good time and place to make that clear, because my sense is that a great deal of that work was bilateral between the government and the First Nations Leadership Council. I think that the minister understands the gist of my question and will take advantage of the opportunity to provide a reply.

**Hon. S. Fraser:** Again, thanks to the member for the question.

Let's let the record show that the work that we did do to this point with the Leadership Council — the member is correct — was done through multiple resolutions. So all three membership groups — the Union of B.C. Indian Chiefs, the First Nations Summit and the Assembly of First Nations of British Columbia — and all through resolutions over the years on behalf of the majority of First Nations in the province who belong to one or many of those organizations, several of them — and all of them, in some cases. They have provided direction through resolution to do the work.

It's safe to say that we will continue to have those conversations with, certainly, the First Nations Leadership Council and others: Métis people — Métis Nation B.C., presumably — and other Indigenous groups. But part of the work we will do as we move forward is to establish the best way to do that through resolutions. The best way that was determined by First Nations in the province was to engage in the work to date through those, through the Leadership Council itself. That's why they have the mandate to do so.

**M. de Jong:** That's very helpful. Do I understand the

minister correctly that the mandate handed to the Leadership Council by the three representative bodies through resolution includes the authority to continue with the work on the action plan on behalf of the member nations of those three bodies?

**Hon. S. Fraser:** My understanding is that the Leadership Council had resolutions that took them to this place where we are now as far as developing the bill. I don't believe they went beyond that. So, of course, those discussions will need to happen, not just between us and, for instance, the Leadership Council but with the Leadership Council membership themselves.

**M. de Jong:** Okay, so then to be clear, in order for the government to engage with the Leadership Council with respect to the work required on section 4 of this bill, it will be necessary for the Leadership Council to secure the mandate from the three bodies represented on the Leadership Council. Absent that, the government would be confronted by the need to work with individual First Nations. Is that an accurate summary?

[5:30 p.m.]

**Hon. S. Fraser:** That'll be a conversation that we'll need to have, as we move forward, with the leadership council. It's something the member raised earlier, the 200. It's actually... I think it's 204 now with Binche, but I'm hopeful that we will have a more streamlined process than 204 consultations. That's my hope as we go forward, just for practical purposes.

[R. Chouhan in the chair.]

**M. de Jong:** Just quickly, two final questions with respect to the section. Who will be conducting the consultation on behalf of the government? And when I say who, I don't necessarily need a name. I mean which department of government. I assume it will be someone.... Well, one should never assume. But my sense is it may be someone from within the Ministry of Indigenous Relations, but I'm curious to know.

**Hon. S. Fraser:** The Ministry of Indigenous Relations and Reconciliation will be the lead on this, but we will be working closely with other ministries and other ministers. Of course, on the other side of this, our discussions will continue and our work with the leadership council. I don't want to leave out Métis people or treaty nations, presumably, as well. We'll be inclusive.

**M. de Jong:** One last question. The minister and my colleague from Vancouver-Langara had a conversation about the consultation that would take place, the bilateral consultation between government and First Nations and Aboriginal groups. I think my colleague urged upon the minister the

importance of engaging with other British Columbians, non-Aboriginal British Columbians, around the preparation of the action plan.

I'll go one step further, though, and urge and ask the minister to indicate what plans he foresees for engaging with British Columbians, both Aboriginal and non-Aboriginal, following the settlement of the action plan. The plan by definition is going to point.... The minister has been cautious about painting an overly detailed picture about what may be in the action plan.

I am surmising and relying on his observations that it would not be unreasonable to assume that it may point to individual statutes that are in line for review and work. That will engage the attention of a lot of people. I take it there has been no separate budget set aside yet to address the need to inform people about what that may mean.

[5:35 p.m.]

I will ask the minister today whether he and the government recognize and are prepared, in the future, to examine the need to devote resources to ensuring that British Columbians across the board are in a position to understand and engage and acquire a sense of the kind of work that is going to take place and provide input and thoughts, particularly when we get to the stage where individual pieces of standing legislation are being considered for amendment and review.

**Hon. S. Fraser:** Certainly, as we move forward with this process, with the action plan, we're committed to the transparency that goes along with that for all British Columbians. We've been clear about that from the beginning, and certainly a lot of my time for the last number of months has been meeting with groups, individuals and industry, various entities, local government, labour, all that.

Work needs to continue, but the transparency around this will be part of the success of this. I'm confident that the work we have with Indigenous partners on this will.... They'll be part of that work — working with British Columbians to make sure that we're all part of this significant change in our relationship that will bring about more predictability and certainty for British Columbians and benefit all British Columbians.

Section 4 approved.

On section 5.

**M. Lee:** As we leave section 4 and refer to the annual report on the action plan, there was.... In response to the member for Abbotsford West, the minister, a few responses ago, again made reference to the 2015 commitment document which was signed on behalf of the previous government, the current member for Nechako Lakes, and representatives of the First Nations Leadership Council. I just wanted to reconfirm....

I'll go on to ask my question about section 5. Perhaps the minister can, just for the benefit of time here, confirm that

the nature of the engagement framework that was set out in this commitment document in 2015 is, from what I'm hearing, the scale and scope of what government intends to continue with in terms of First Nations engagement, business and industry engagement, federal engagement — with the federal government — as well as public awareness and other stakeholders. There is an indicative engagement work plan that's attached to that.

What I'm hearing from the minister is that the government is continuing with that overall framework and the action plans that were set out by this government with the First Nations leadership — that that framework is really, in answer to my colleague, the member for Abbotsford West, what we can expect in terms of that high-level action plan that government is going to be coming back with, with Indigenous peoples' leadership.

[5:40 p.m.]

Can I just ask, though, one question around the annual report? In subsection 5(3) when it speaks to the report, the minister responsible "must report on the progress that has been made towards implementing the measures referred to in section 3 and achieving the goals in the action plan," can the minister describe and perhaps give an example of what he expects will be a goal in the action plan, particularly as it pertains to subsection 4(1)?

**Hon. S. Fraser:** We do not have the action plan yet. So without the action plan, it's hard to answer the question about reporting out on it. But I did use an example of the concrete actions in the commitment document. It may be in our work in collaboration with Indigenous peoples that that or portions of that become part of the priority. That certainly would be something we would report out, but again, I don't want to be prescriptive there. Those discussions have not yet happened.

Section 5 approved.

On section 6.

**M. Lee:** Earlier, when we were speaking to subsection 2(c) of the bill, we were speaking with the minister about this section. First, if I could ask the minister to describe the nature of the agreements that would be entered into pursuant to subsection 6(1)?

[5:45 p.m.]

**Hon. S. Fraser:** Section 6 enables ministers, for the purposes of the act, to enter into agreements with Indigenous governing bodies. Yes, the legislation will allow ministers to enter into a variety of agreements with Indigenous governments. This includes various kinds of collaborative decision-making processes that do not contemplate joint or consent statutory decisions.

**M. Lee:** Can the minister provide an example of what he

means in terms of a collaborative decision-making agreement?

**Hon. S. Fraser:** I think the best example I can give, to start with, is certainly the shíshálh agreement, the reconciliation agreement that we entered in last year with shíshálh.

**M. Lee:** With this type of agreement that's contemplated under subsection 6(1), it doesn't have the same sorts of requirements that are set out in section 7 — for example, any contemplation of restriction on the initial authorization given by the Lieutenant-Governor-in-Council or some contemplation of consultation with local governments or other persons or even a filing requirement.

Can the minister comment on whether any of those requirements in section 7 for a different type of agreement would be also applicable to this type of agreement under section 6(1)?

**Hon. S. Fraser:** The member is right. It's not required, but it's our general approach to ensure that we have the appropriate mandate engagement transparency also.

[5:50 p.m.]

**M. Lee:** I think the minister agreed with my observation that, explicitly, those requirements aren't being applied in section 7. Is the minister indicating, though, that in the absence of those explicit requirements, that would still be the case?

**Hon. S. Fraser:** So section 6 and section 7.... The conditions laid out in section 7 do not apply to section 6(1), but general best practices do apply to agreements in 6(1). But section 7 is very explicit in the requirements for the very specific types of agreements. That's why there is a difference there.

**M. Lee:** Actually, I have no further questions on section 6.

Section 6 approved.

On section 7.

**M. Lee:** Just to acknowledge the response from the minister, I believe he is indicating, as he did before, that there is just general best practice. So we're relying on government to....

[5:55 p.m.]

While the bill doesn't actually say these requirements, there's a general best practice of the government that they would do the kinds of things that are indicated in areas of consultation, in terms of a limitation on authority as well as filing of the agreement.

If that's the best answer the minister has, then we'll just have to move on, at this stage, to section 7. I just wanted to at least respond in that manner.

In terms of section 7, is it the government's view that the application of section 7 is within the confines of the Canadian constitution legal framework and section 35 jurisprudence?

**Hon. S. Fraser:** The answer is yes.

**M. Lee:** Is there any concern, by this government, in terms of fettering the discretion of the Crown?

**Hon. S. Fraser:** The answer is no.

**M. Lee:** What indications has government given to industry and to stakeholders as to how this section will be utilized?

**Hon. S. Fraser:** What we've said to industry partners is that agreements where Indigenous governing bodies and government jointly exercise the statutory power of decision or agreements relating to the consent of an Indigenous governing body before the exercise of statutory power of decision.... These would all require consequential amendments. They would come to this place. That's part of the transparency that's built into the assurances we gave to industry.

**M. Lee:** I have an understanding that.... There was some communication by the organization MABC to their members as to what the government has confirmed. I just wanted to read that into the record and see if the minister agrees with the statement.

In respect of this section of the bill, it's been noted to their membership that.... Government has confirmed to the MABC that these kinds of decision-making agreements would focus on high-level strategic decision-making interests, not individual permitting processes. Is that correct?

**Hon. S. Fraser:** Yes, it is.

**M. Lee:** It goes on to say that the agreements would require public notice and involve local governments and other stakeholders. They would also set out the rules and processes for decision-making and be subject to the Judicial Review Procedure Act, ensuring that the decisions are administered in accordance with administrative fairness and accountability and subject to judicial review, if challenged.

Is that also something the minister would agree with?

**Hon. S. Fraser:** Yes.

**M. Lee:** Just in terms of the rules and processes for decision-making and coming back to the test that the minister had stated earlier, in terms of entering into types of agreements under section 7 or section 6 of the bill.... The minister referred to having confidence in the way in which Indi-

genous peoples would be freely agreeing as well as capacity to ensure that government could hold, in this case, an Indigenous governing body accountable for its responsibilities. Could the minister comment on how that will be factored into these agreements?

[6:00 p.m.]

**Hon. S. Fraser:** For the province, as I mentioned before — I think we were in the other chamber — the two key factors in recognizing an Indigenous government for the purpose of this act will be confidence that the constituents of the Indigenous government have freely agreed to this representation and that the government has the capacity to work under this act to participate in the process and to be accountable for any decisions that are made.

I'm trying to think of examples here. For example, band council resolutions, assembly resolutions, that sort of thing.

**M. Lee:** I just want to come back to the statement that the minister confirmed on behalf of the government — that, in their view, the application of section 7 would be read and applied consistent with the Canadian constitution in section 35 jurisprudence. The manner in which this section is set up, where there is a requirement for.... Well, first of all, government needs to agree to enter into the agreement. I appreciate that — that government may choose not to enter into an agreement.

Where it does, with Indigenous governing bodies, it contemplates that the requirement is that the exercise of a statutory power of decision must be done jointly by the Indigenous governing body and the government or another decision-maker. It's that and/or that the consent of the Indigenous governing body presumably be obtained before the exercise of a statutory power of decision.

For the government's indication to stakeholders like the MABC that this would not be in the context of a permitting type of activity or a statutory power of decision, there are other areas, of course, that government may choose to enter into an agreement. Is it the case that government is controlling or intending that it won't enter into agreements where there'd be any risk — that the application of this section and this joint decision-making process would go beyond section 35 jurisprudence?

**Hon. S. Fraser:** Joint decision-making is not new in provincial law. A number of current pieces of legislation already reference joint decision-making with First Nations. For instance, the Haida Gwaii Reconciliation Act comes to mind to me now. The environmental assessment legislation passed last year also has a process of collaborative decision-making. Joint decision-making is contemplated through agreements like the recent one with the shíshálh Nation, as I mentioned also.

The joint decision-making will create the means for Indigenous peoples to fully participate in decisions that affect them and create conditions for success and predictability for

good projects moving ahead. I think that's the intent that we're looking at here.

[6:05 p.m.]

**M. Lee:** Just one last question, if I may, on this particular section, then. What I'm hearing.... I just want a reconfirmation from the minister that the areas in which the government will apply these joint decision-making agreements would be areas where it would not go beyond what is a recognition that....

As we were discussing in committee yesterday, there was a confirmation by the minister, when we were having discussions around project approvals and project development approvals, that the Crown certainly continues to have the final decision-making authority. In that context, clearly, this section would be inoperative, and the government would not enter into a decision-making agreement in areas where the Crown does have the final decision-making authority. Is that correct?

**Hon. S. Fraser:** We can enter into agreements, but they can't be implemented without consequential amendments. In my previous response, I should have said also that everything within Bill 41 is within the constitution in section 35.

Sections 7 to 9 inclusive approved.

On section 10.

**M. de Jong:** I have, I think, but one question, which I could actually ask with respect to the schedule. With the minister's indulgence and the committee's indulgence, I'll ask it in section 10, and then we can allow the schedule to pass.

I will say, firstly, that I think I can communicate, on behalf of my colleague from Vancouver-Langara and myself, that we have found the discussion about Bill 41 and the exchange helpful, illuminating. One is almost tempted to say enjoyable. That is due in large measure to the minister's willingness to engage and provide, where he can, illumination about the government's intention — and, of course, the assistance of his staff and the team that has been supporting him, some of whom I know well from other duties in this place. We're grateful.

It is not my intention to, in light of what I just said, in any way try to leave the exercise on a negative note. But something has been nagging at me that I want to put to the minister, at least for his response. I am curious. Over the course of the discussion, it's not surprising that we spent time talking about the concept of free, prior and informed consent. We attempted, as best we can, to better understand what that meant.

[6:10 p.m.]

That was one area that I think we spent some time on, but there were others. The minister, to his credit, over the course

of the debate, repeatedly repeated some positions and understandings that he and the government have. Particularly in response to questions from my colleague from Vancouver-Langara, he repeatedly asserted the fact that the bill and the UN declaration must be viewed through the lens of Canada's section 35 jurisprudence.

He was particularly clear about wanting to repeat.... The quote I have here is: "I just want to be clear. Bill 41 does not bring UNDRIP into legal force and effect." On another occasion: "Upon passage of the bill, there will be no immediate effects on laws, other than as an interpretive aid. As I've mentioned before, an interpretive aid.... That's still up to the courts.... To be clear, it doesn't give legal force and effect." Again: "I stated earlier that Bill 41 doesn't give the UN declaration itself the force of law and doesn't create any new laws and new rights."

The minister, I think, on the advice he has received from his team and particularly from the Attorney General's staff and ministry, has felt compelled, by my count, almost 20 times during the debate to make that clear on the record. That has been helpful, and we've been appreciative of that clarity.

My question in light of some of what I have read and some of what I have had communicated to me.... The minister has made those statements in a public setting, in as public a setting as we have. So this might seem a bit odd to pose this question. But has the government's position in that respect, on those matters, been communicated directly and formally to the leadership council? Is the government's appreciation and position on those matters clearly understood by the leadership council with whom the government has worked in creating Bill 41?

**Hon. S. Fraser:** Yes. We've had frank and open conversations with the leadership council about where we're going with this bill, what it means, the communications, the messages. This has all been openly discussed with the leadership council in a frank way.

To be clear, this bill doesn't in itself change the laws of B.C. It commits us to an action plan and to aligning our laws with the UN declaration on the rights of Indigenous peoples over time. When legislative changes are proposed through this process, they will, of course, come to this House for full debate.

It is important to note that the action plan will be carefully considered in consultation and collaboration in good faith with Indigenous peoples. The public, industry, local governments and other stakeholders will be engaged as we move forward with legislative changes. This is changing the Crown-Indigenous relationship in a way that will benefit all British Columbians. It's bringing more transparency, more predictability to business. It will benefit families and create jobs. It will make this province more just.

I'd harken back to the Truth and Reconciliation Commission's calls to action, and one of the key calls to action was for governments — governments plural, all governments — to

adopt the UN declaration. It's one of the key calls to action. It's important that we take that seriously.

I want to thank British Columbians and local government, industry, business, NGOs, labour and academia, all of which have shown such great support for the direction that we're going — that it's about time we do this.

[6:15 p.m.]

Also, certainly in this short time, relatively, as minister and the time in opposition as the critic for many, many years, this has been called for over and over again as a mechanism to move forward and a way to make things better in this province.

I thank the Indigenous people in this province who have helped educate me about the importance of this.

With that, I want to thank the members opposite for their thorough work on this. It's day 5 — five full days on this. I think they've done a good job. I hope we have done a good job in response to your questions.

Section 10 approved.

Schedule approved.

Title approved.

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

**The Chair:** Division has been called.

[6:20 p.m.]

Motion approved unanimously on a division. [See *Votes and Proceedings*.]

The committee rose at 6:22 p.m.

The House resumed; Mr. Speaker in the chair.

### Report and Third Reading of Bills

#### BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Bill 41, Declaration on the Rights of Indigenous Peoples Act, reported complete without amendment, read a third time and passed.

[Applause.]

Hon. M. Farnworth moved adjournment of the House.

Motion approved.

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

The House adjourned at 6:25 p.m.

### Proceedings in the Douglas Fir Room

#### Committee of the Whole House

#### BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT (continued)

The House in Committee of the Whole (Section A) on Bill 41; S. Chandra Herbert in the chair.

The committee met at 1:48 p.m.

**The Chair:** I want to acknowledge that we are on the traditional territories of the Ləkʷəŋjínəŋ-speaking people — the Songhees and the Esquimalt. I want to thank them for hosting us here on their lands.

On section 2 (continued).

**M. de Jong:** I'm going to ask to direct the minister's attention to article 38 of the declaration and, in posing just a couple of questions, acknowledge that we will have a more fulsome discussion in a moment about similar language that appears in the next section, specifically, a statutory requirement to "take all measures necessary."

The language in article 2 is slightly different and reads: "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration." We are, I think it's fair to say, very much engaged in that exercise, today and these past days, with Bill 41.

From the conversation that we have had and the information the minister has been able to impart to the committee, it's my sense that as part of both its overall response to the declaration and its response to article 38 and the language in the section coming up next, the Legislative Assembly should anticipate, over the course of future sittings, additional legislation that would be pertinent to giving effect to the government's intentions around the declaration.

[1:50 p.m.]

I'm not, at this point, asking the minister to provide specifics around what that legislation might be and in what order that might be. But is that a fair assumption on my part?

**Hon. S. Fraser:** Yes, that would be a fair assumption.

**M. de Jong:** The next question is a little more specific. It relates to something we came across earlier in our conversations, when we were talking about some of the work that has already taken place. We talked about the Environ-

mental Assessment Act and one other example. I have forgotten now.

**M. Lee:** The Professional Governance Act.

**M. de Jong:** The Professional Governance Act. Thank you to my colleague from Vancouver-Langara.

In both of those instances, we saw specific reference to the United Nations declaration embedded in the act or in the amendments to the act.

This will be a question that I'm certain the minister will want to check with his team, and at the end of the day, he may say: "I'm not in a position to answer." Going forward, following the passage of Bill 41, which I expect will pass here in the next few days, is...? Will there continue to be a need, in future legislation, to make those references in individual statutes, or does Bill 41, by virtue of how it is constructed, upon passage, preclude the need for that?

**Hon. S. Fraser:** The bill itself does not require or preclude the citing of the UN declaration. We'd be dealing with this — I think the member alluded to that — case by case.

**M. de Jong:** Okay. That's helpful.

I guess what I'm trying to establish is the degree to which, if at all, the language in Bill 41 represents a blanket application. We've talked about the declaration remaining, actually, an interpretive guide for the courts, for example.

[1:55 p.m.]

To what degree, if at all, does Bill 41 apply a blanket interpretive guide? Does there remain a need, in at least some instances, in the minister's and government's minds, for individual statutes to include a separate reference to the declaration in the way that the two bills I mentioned earlier do?

**Hon. S. Fraser:** The UN declaration itself provides limited guidance on how governments should implement its provisions. But Bill 41, the bill before us, addresses how B.C. will go about achieving the ends of the declaration. Subsection 2(b) — sounds Shakespearean, I know — states the purpose of the bill is "to contribute to the implementation of the Declaration."

On the legislative measures, section 3, which is yet to come, provides that the province will "take all measures necessary" to ensure the laws of B.C. are consistent with the declaration.

The action plan, which will be coming in section 4, is intended "to achieve the objectives of the Declaration" and could also include more than just legislative measures. For example, it could include policies or programs as well.

**M. de Jong:** All right. Again, I don't wish to belabour this. I'll just try one more time, because I thought in his first answer, the minister came pretty close to providing a discernable answer.

We have seen examples — in advance of the introduction

and, soon, passage of Bill 41 — where the government, in pursuit of its objective to incorporate and be guided by the tenets of the UN declaration, amendments and drafting to specific statutes that include specific reference to the UN declaration.... We have, in the bill before us — in the previous section, in this section and in the section that follows — provisions that speak to the implementation of the declaration, the application of the declaration, to the laws of B.C.

I guess what I'm driving at is, on the surface, at least, it would appear that the need for future references to the declaration in individual statutes would not exist. But maybe there are circumstances or maybe there is a legal reason where it does — where there will remain a need, in the minds of the government and the ministers responsible, to include a specific reference in an individual statute, above and beyond Bill 41.

Can the minister provide a response to that? Under what circumstances might that be necessary?

**Hon. S. Fraser:** I think I agree with the member. I've mentioned before that it does not preclude referencing the UN declaration, but it doesn't require it. We want to make sure that laws are compatible with or in agreement with the UN declaration. I wouldn't want to hamstring future governments in the work of bringing legislation into alignment. I can't think of any legal reason, but maybe there is.

I know in the case that was cited initially — the two cases that were cited by the member opposite, who was talking about the Environmental Assessment Act and the governance, so both of those.... I'm not sure about the requirement for that in the future. But it could be.

[2:00 p.m.]

I guess I'll ask the member: are you looking for specific examples where it might be required? Should I be delving deeper on this one?

**M. de Jong:** No, I'm not sort of leading to any one specific example. The proposition I'm testing is the degree to which Bill 41, in and of itself, serves a purpose that might otherwise be necessary on an individualized basis. In the case of the two statutes that we've identified, which predate Bill 41, in order to accomplish the government's objective of embedding a reference to and guiding behavior by the declaration, it would have been necessary to include that specifically in the bill.

What I'm querying in a very general way is whether Bill 41, in the government's mind, accomplishes that on a far broader basis, such that that's no longer required. I'm not advancing the proposition that the bill or the declaration requires it. I am posing the question about whether or not passage of Bill 41 precludes the need for it.

**Hon. S. Fraser:** It certainly wasn't our objective to preclude referencing the UN declaration. I would say that the two previous pieces of legislation that were cited are very broad in the use of the term "UN declaration." I mean, it's

not specific. It's not surgical in any way. Whereas, the intent, I think, following with the action plan is to look at legislation and to amend it case by case, as necessary, more surgically than the allusion to the UN declaration in the other two, the previous pieces of legislation.

Again, these would be case by case. But it's not our intent to have Bill 41 preclude the use of the term "the UN declaration."

**M. de Jong:** Okay. Thanks to the minister.

Let's go on to article 39. I'll quickly read it into the record. "Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration."

How does the minister and the government interpret that article?

[2:05 p.m.]

**Hon. S. Fraser:** We've already addressed the financial assistance issue in the context of self-determination. As I stated previously, article 4 does not create a positive obligation on the part of the state, but there will be conversations about funding from the provincial government.

**M. de Jong:** Would the minister agree with me that the essence of what is conveyed via article 39 is that states which sign on and seek to implement the declaration are also accepting, to one degree or another, the notion that Indigenous peoples will have the right and the need to access funding from those states? In the context of British Columbia, that would be the government of British Columbia.

**Hon. S. Fraser:** I think as a government, we certainly recognize the need for nations to have the capacity and the funding to provide the capacity. The province already provides capacity funding and technical support, as the previous government did, to a significant number of First Nations negotiating tables.

I think in recognition of.... Besides that, other funding opportunities for capacity and for things including capacity, I would suggest, would be the long-term source of funding — the stable, long-term funding from gaming revenue that has recently begun to flow to communities. It's almost \$100 million per year, which, I think, directly supports self-government and self-determination.

**M. de Jong:** Does the minister accept this proposition, which has been made to me by First Nation leaders with whom I've had a discussion about this?

Part and parcel of embracing and embedding the declaration in the way contemplated by Bill 41 is the need for the government to recognize that the enhanced levels of consultation that the minister has discussed throughout this debate, engagement and processes, which the minister has alluded to in general terms, are going to place additional

demands on the very First Nations with whom the government wishes to engage and that that will translate into a need for additional resources that First Nations will be looking to government to help provide.

Is the minister accepting of that proposition?

[2:10 p.m.]

**Hon. S. Fraser:** It is a good question around capacity. Capacity has been....

I think we've recognized that this is a challenge with communities, with First Nations and working with government. I did mention some of the ways we tried to address that. I would suggest that the sections of Bill 41 coming forward also address a way of us working with First Nations to prioritize the needs, to put priorities down as far as legislative change. That will certainly help develop an orderly path forward to help inform us of issues of capacity that might go along with that.

There are other.... Besides the existing capacity that's been ongoing for funding for things like technical support for a lot of tables and the stable, long-term funding that was recently begun with the \$3 billion investment over 25 years, a direct transfer of revenues from gaming to all First Nations communities in the province, the province also provides funding for capacity through the First Nations Public Service Secretariat; the First Peoples Cultural Council that we've talked about — the \$50 million towards language revitalization, amongst other things; the friendship centres to support Indigenous peoples in urban areas; the First Nations Health Authority, of course — they're part of that picture; funding for housing and child and family services, etc. Besides that, of course, there are....

The federal government has a role here also. Then, of course, there's working with First Nations, ensuring, in the interests of self-determination.... There is own-source funding too. We're seeing a lot of nations creating a lot of opportunities and wealth and building capacity themselves within their own nations.

**M. de Jong:** Maybe I'll relay to the minister the argument that was advanced to me by this First Nations leader, who said something along the following lines. I'm paraphrasing, but I think it's pretty close. "If UNDRIP," he said, "is going to have any practical impact, we" — we being First Nations — "are going to need more capacity dollars from government." That was his point to me.

Now, the minister has, appropriately, gone through a list of areas where First Nations have received, are receiving, financial contributions and sharing. He mentioned the gaming, which is not an insignificant amount, and I'm not quarrelling with that.

[2:15 p.m.]

He's mentioned the role of the federal government and the role that own-source revenues can play in meeting the additional requirements that First Nations will have, in terms of engaging with the government, along the lines contem-

plated in the declaration. The proposition being advanced, I think, by many First Nations leaders is that in addition to that, there will be both a requirement and an expectation that funding for consultation capacity from the provincial government will increase.

I'll try to bring all these questions together. Does the minister agree with that proposition — that, post-passage of Bill 41, in addition to the other areas the minister has quite properly referred to, there will be a requirement for additional capacity funding? Does he agree with that proposition?

Secondly, if he does, has there been any preliminary attempt by the government to quantify what that might look like, recognizing that it may well be a matter for future budgets? But has there been any preliminary work? Has there, for example, been a Treasury Board submission prepared to advance the requirement for that additional funding? So, really, two or three questions I've lumped into one there.

**Hon. S. Fraser:** As a government, we have recognized, certainly, the needs for capacity. You know, we have already.... I'll cite it again. This is part of why we went forward in partnership with the First Nations Gaming Commission to develop the plan for gaming revenue sharing. That is part and parcel of what we did there.

[2:20 p.m.]

There may certainly be needs in the future. What will help to determine that will be through the workplan that we will proceed with in sections 3 and 4 that we'll be following here.

Government still needs to.... We have to work within our own capacities too. Reconciliation won't happen overnight through Bill 41. It's a plan that's already anticipating that this will happen over time. But we have to meet our realities of government — things like balancing budgets and such. We still have to do it within that framework in that context.

**M. de Jong:** Thanks to the minister. Last question on this, I think.

If we look forward — following, again, the passage of Bill 41, and to the extent that the scenario the minister alludes to plays out — and there are additional needs on the part of First Nations with respect to carrying out the work that flows from Bill 41 and the UN declaration and the government is called upon and agrees to shoulder some of that fiscal burden, where in the budget would it appear? Would it naturally be a function of his ministry, of the ministry he presently leads?

I guess the question.... To the extent that the government seeks to assist with costs that First Nations point out as accruing to them as a result of the passage of Bill 41, and to the extent that the government is prepared to do that in the future, where do we look for it in the budget? Will we see it in the minister's budget? Will his ministry be the point person or the point agency within government for advancing that, or will it be elsewhere?

[2:25 p.m.]



**Hon. S. Fraser:** It's probably a question for future budgets, but each ministry already has a mandate and a responsibility under that mandate towards the UN declaration and reconciliation. Following from that.... That'll be considered through future budgets, at least in part based on the work of the action planning that will come out of Bill 41.

We have a commitment towards a balanced budget. So it has to be done within that. There are already examples, I think, if you look at existing budgets since the mandate was given two years ago to each minister to work towards the implementation and adoption of UNDRIP. We see that reflected in the budget in, for instance, Indigenous housing through individual ministries. I'm anticipating that will be similar — again, within the context of commitments towards things like a balanced budget.

**M. de Jong:** Thanks to the minister.

Hon. Chair, we are beginning to draw close to the final provisions of the declaration. I know it has been a lengthy examination and, candidly, I think, a very helpful one in terms of better understanding this instrument.

Just a couple more articles that I'd like to solicit the minister's thoughts and views on. Article 41 is not too lengthy. I'll read it into the record so anyone following later can have the written record before them. Article 41 reads: "The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established."

I have a version of what I think that means, but I'm interested to hear how the minister interprets article 41.

**Hon. S. Fraser:** I think this article speaks to work being done, certainly, at the international level, in its essence, to implement the declaration.

**M. de Jong:** Okay. Well, I'll share with the minister what I thought it meant. I read it kind of literally. It sounds like an offer of financial assistance.

Interjection.

**M. de Jong:** I thought the minister might be excited by that proposition.

I don't mean for this to sound cheeky, but we are engaged here in something that has not happened anywhere else in the world. We've established that over the course of the discussion. This must be, from the point of view of the United Nations and those within that very large organization, something very satisfying — to see a jurisdiction, at the domestic legal level, take the step that the government of British Columbia is purporting to take with Bill 41.

I think the minister or someone in the course of this

debate has used the term "pilot project" — or advancing, for the first time, where no one else has gone. If we're right or if I'm right.... I won't presume to know the minister's mind. But if it is an offer from the United Nations to at least consider the option of providing funding....

In light of the conversation that we just had, has there been any contact with the United Nations to explore that?

[2:30 p.m.]

**Hon. S. Fraser:** No, there has not been, but I would not dismiss the idea.

As the member raised it, I think it's worthy of an opportunity here, as we move this legislation through this august place in British Columbia, as a leader in the world. I do not doubt that there will be inquiries made of how and what we're doing and how other jurisdictions can do it. Those inquiries have already started. Perhaps a conversation with the current rapporteur at the UN or other officials on how we might be able to work together in a different way on this. Maybe that is appropriate. I thank the member for planting that seed.

**M. de Jong:** Thanks. To the member, "bon chance," as they say in the diplomatic world.

Article 46. There are two parts to article 46, and I'll ask the minister about both of them. One, they're a little lengthy. I'm not going to read them into the record. Actually, there are three sections to article 46. It's 1 and 2 that engage my interest.

Can the minister indicate to the committee how he and the government interpret the provisions of article 46-1? What, in effect, is the declaration saying there?

**Hon. S. Fraser:** Moving to the essence, I think, of article 46, I think this speaks right to the rights in the UN declaration — that they're not absolute.

**M. de Jong:** I'm inclined to agree with.... Well, I do agree with the minister. I think the article breaks that down in a couple of ways, and 1 is intended to convey — well, not surprisingly — something slightly different than 2.

Does the minister wish to particularize, as between 1 and 2, what those limitations on the rights conveyed in the declaration actually are, as between article 46-1 versus article 46-2?

**Hon. S. Fraser:** A good question. I'll take a stab at it here.

Paragraph 1 of article 46 should be read together with the declaration's provisions on self-determination, specifically. But paragraph 2 of article 46 confirms that the province continues to have the right to make decisions in the public interest. But again, I qualify this. Neither the UN declaration nor Bill 41 provides a veto.

**M. de Jong:** All right. Let's go back to 1. My sense was that 1, in drawing some form of limitation around the application

of the rights conveyed in the declaration, was largely intended to convey a protection or a reference to the territorial integrity of member states of the United Nations. Does the minister share that view?

**Hon. S. Fraser:** Yes.

[2:35 p.m.]

**M. de Jong:** Then with respect to article 46-2, I read that as, somewhat, the United Nations declaration equivalent of section 1 of our Charter. Section 1 of our Charter makes the point that the rights conveyed in the Charter, which are overarching and constitutional, can only be limited in circumstances where it's prescribed by law and demonstrably justified in a free and democratic society. There's that key phrase.

The language here is different, but I interpreted the concept as being similar — that it is, as the minister said a few moments ago, designed to create, on the part of the declaration itself, a form of limitation and the broad rules around which those limitations might be defined and applied. Does he share my view around number 2?

**Hon. S. Fraser:** Thanks to the member for the question. I think, on the face of it, I would tend to agree with the intent of what the member is suggesting. But for the record, perhaps I'll put it in my own words.

The rights of the UN declaration are not absolute. I see it this way. This is a reading of 46 — paragraph 2 of article 46. It confirms that the province continues to have the right to make decisions in the public interest. But as discussed earlier, the province is expected to consult and cooperate in good faith when considering decisions that may affect Indigenous peoples, so within that context.

**M. de Jong:** I was trying to think of an example that would fall within the provincial... I suppose if I took enough time, I could think of one where the provisions of article 46-2 might come into effect. I mean, I must confess I had an easier job doing it in areas that are more squarely within the federal jurisdiction.

We talked a little while.... We didn't spend any time on the article dealing with military activities on traditional lands. I think, though, that might be an example, if we were talking about the federal setting, where, in the event of crisis and conflict, there might be an opportunity where a government could invoke 46 to disregard or temporarily disregard some of the processes and protections contained in the declaration.

[2:40 p.m.]

Can the minister think of an example within the provincial constitutional jurisdiction where 46 might have application? It might be a better way to illustrate the workings of 46-2 than to just talk about it in abstract terms.

**Hon. S. Fraser:** I guess the military might be an obvious

example. I wouldn't want to try to figure out other examples, maybe, at this point.

The province views that the UN declaration is to be applied within, certainly, the constitutional framework of Canada. This interpretation of UNDRIP, the UN declaration — that limits on Indigenous rights, in certain circumstances, can be valid — is consistent with Canadian jurisprudence regarding the need for governments to justify infringements on Aboriginal or treaty rights, recognized and affirmed, of course, under section 35 of the Constitution Act in 1982.

Again, the UN declaration, with the context, could be international. I'm not sure of the intent. In the international arena, there might be some other meanings there. But I think within British Columbia's context, that would cover it.

**M. de Jong:** Well, that brings us to the conclusion of our specific examination of the declaration itself. I know we've taken some time to undertake that work.

I think it was a worthwhile exercise to obtain some of the minister's thinking about how these provisions of this international declaration, UN declaration, have application within the context of British Columbia and the Canadian constitutional framework. It also allows us, I think, for the balance of our time in this committee and this examination, to focus on the legislative provisions as opposed to the provisions that derive from that other body, that international body, the United Nations itself.

I think my colleague from Vancouver-Langara has several more questions related to the wording in section 2. Then we'll be in a position to move on to the subsequent sections of the bill.

**M. Lee:** I just wanted to also add my thanks to the minister and his team for, again, the patience to walk through many of the articles in the declaration with the member for Abbotsford West and myself over the last number of days. I think it's important to establish an understanding of the declaration.

[2:45 p.m.]

As we turn back to subsection 2(a), in terms of the purposes of this bill, it says: "to affirm the application of the Declaration to the laws of British Columbia." I know that we've had, at various junctures through the course of this committee stage, opportunities to summarize, with the minister, the meaning and the application and the impact of this Bill 41.

When I look at this purpose, I believe, from our understandings here at committee stage, that when it says "to affirm the application of the Declaration...." We've heard, and we've had the discussion with the minister, that the declaration has been an interpretive tool utilized by the courts. On day 2 of our committee stage, the minister and his team were helpful to come back with a number of court decisions, which I wanted to come back to in a moment, just to walk through two of them by way of example.

Secondly, with the passage of the bill, the minister has

indicated, on behalf of the government, that the declaration would have no force and effect and would continue to be an interpretive tool by the courts.

Really, I think, when we go through the articles and walk through how they might be applicable to British Columbia law, we've come to understand — and the minister just actually underlined again — that with the nature of the declaration itself being international in scope, it was done for a variety of purposes by a variety of nations for specific circumstances and contexts that they have with their Indigenous peoples in their lands. I think the meaning from that is that they may not have direct applicability in British Columbia.

On the first or second day, we covered that certain articles are also in federal jurisdiction, like the militarization or the military activities that article 30 concerns. There may be other areas around health and education that we've talked about — treaties, international treaties. Those are the kinds of articles and elements of the articles that may well have application and require cooperation and contribution as we implement the declaration in British Columbia, as per the purpose set out in subsection 2(b).

Of course, the declaration itself would continue to be applied by this government as it goes through the action plan process to meet the commitment in section 3 of this bill, as well, within the confines of the Canadian constitution, the Canadian legal framework, section 35 jurisprudence, and it's that process to come for which this declaration is being applied.

I just wanted to reconfirm with the minister my basic summary as to where we are with this as we go back into section 2(a). Is that what the government intends when they're saying that the declaration applies to the laws of British Columbia — that it applies as an interpretive tool for the courts; that it will apply as the basis on which government will look "to ensure the laws of British Columbia are consistent with the Declaration," as set out in section 3; and that there'll be an action plan process under which the declaration will be implemented to achieve the objectives of the declaration? We will discuss what those are.

Then, lastly, in terms of the decision-making agreements that are set out in section 7, there are certain abilities, certainly, which, by way of agreement with government, are expressed. I just wanted to have a clear understanding with the minister that that is what this government intends when they use the words "to affirm the application of the Declaration to the laws of British Columbia." Am I correct in my understanding?

**Hon. S. Fraser:** Yes. I'll try to be very clear here. In section 2(a), I think you've got it. The courts may look to the declaration as an interpretive aid — where if there's ambiguity in legislation such that there's an interpretation that aligns better with the declaration, that interpretation would be preferred.

And yes to the other points that the member raised, I think rightly so: the alignment of laws and action plan, yes.

[2:50 p.m.]

**M. Lee:** Let me say that I appreciate that confirmation. I know we're on day 5 of this committee process, and we're near the end of our process as we get through the balance of the bill, but I do think it's important that we have a clear understanding of what is going to be a framework to implement the declaration in this province over many years and that we will see in terms of the action plan.

Let me just say that there was a decision that the minister had cited, which is the Judy Sackaney and Mary Ann Shoeffly-Devries decision back in 2010. On paragraph 35 of this decision, on page 10, I just want to read into the record. At the time, the court said this:

"The UNDRIP is an international instrument regarding the rights and treatment of Indigenous peoples, adopted in 2007 by the United Nations. As pointed out by counsel for the respondent, it is not legally binding under international law, and although endorsed by Canada in 2010, it has not been ratified by parliament. It does not give rise to any substantive rights in Canada.

"International instruments such as the UNDRIP may help inform the contextual approach to statutory interpretation, but no issue of statute interpretation has been raised in this case. The appellant's argument relating to UNDRIP also has no chance of success."

Well, that wasn't the part that I needed to emphasize, and that's not the intention.

I just wanted to say, though, at the time, of course, there was no ratification by parliament. That's something that many in this country expect the Prime Minister to be doing with this new government. That will come. Certainly, that's what we're seeing here in British Columbia. I think that that is consistent with the discussion we've been having at this committee stage. And when the minister says that it's there as an interpretive tool and that it does not give rise to any substantive rights, that, I think, is a demonstration of that, in the view of the courts.

There was another decision in November 2013, again in the set that the minister referred to, which relates to Chief Jesse Simon and others in New Brunswick, a decision of the federal court. And in that instance, at paragraphs 117 and 121, the court, in referring to.... This was to do with the applicants' rights to receive benefits under income assistance programs. In that case, there was reference to section 35 of the Constitution Act, as well as UNDRIP.

In fact, the articles that were particularly cited included article 43. I think it was 19 and one other. The court there again reiterated that while the instrument does not create substantive rights, the court nonetheless favours an interpretation that will embody its values.

I think, again to the minister's point, we're looking at the declaration as expressing principles — principles of interpretation. So I wanted to just state that. I don't know if the minister has any comment about those two particular decisions I've referred to.

**Hon. S. Fraser:** I do believe they represent a fair summary of the court's decisions, yes.

**M. Lee:** Thank you, Minister. I appreciate that. I was only choosing two examples. There are a few other examples. Some are very similar; some are not similar. But that was because there wasn't sufficient reliance, let's say, of the court on the declaration.

I just wanted to then turn to section 2(b). This is something that the minister did refer to in response to a number of questions that my colleague the member for Abbotsford West and myself had on certain articles in the declaration.

[2:55 p.m.]

There was a response given at the time, which I'd just like to invite the minister to reiterate at this stage, now that we're back in the main section of the bill, that what's intended here, in terms of the purposes of the act, is that British Columbia, in effect, will contribute to the implementation of the declaration, meaning that there are other parties that will also do the same, namely, the federal government.

First of all, is that the correct understanding? Secondly, which other parties does the minister expect to contribute to the implementation of the declaration?

**Hon. S. Fraser:** Thanks to the member for the question. I think it's good to clarify these as we go back into the body of the bill, and I thank the member for allowing me the opportunity to do that.

With respect to paragraph (b), the act contributes to the implementation of the declaration by requiring the B.C. government to align its laws with the declaration, which will be coming up in section 3, and to prepare and implement an action plan, which will be referenced fully in section 4, and to report annually on the progress made.

**M. Lee:** I'll just make a comment that we'll come on to in terms of understanding the action plan and how that process will unfold. Clearly, the minister has indicated — and I respect and understand at least the consideration of this — that government does not want to be overly prescriptive as to how the declaration ought to be interpreted.

There is an area of cooperation here that the government is expecting with First Nations, and that contribution is where the government sees its effort. Is that correct?

**Hon. S. Fraser:** I think the member has it correct. It is an opportunity for us, as government, to work cooperatively and in collaboration with Indigenous people — with First Nations, Métis, Inuit — and also with our federal partners too.

**M. Lee:** Lastly, on this section, is the third purpose, which is subsection 2(c). First of all, I know we've had, on the first day, a discussion around the definition of "Indigenous governing bodies." I would just like to invite the minister to walk us through, as a committee, the purpose or the intention of having this wording set out as the third purpose of this act.

**Hon. S. Fraser:** Thanks to the member, again, for the

opportunity to do just that and to make it clear to those watching and those that might review this later.

Paragraph (c) of section 2 relates to the portion of the proposed legislation allowing government to enter into agreements with Indigenous governing bodies. By enabling government to contract with the entity, Indigenous peoples have authorized to represent their section 35 constitutional rights. The government is able to acknowledge the right of Indigenous peoples to determine how they govern themselves.

**M. Lee:** It's helpful to hear that explanation, which is consistent with what other members on this side have understood in the technical briefings.

Can I just ask, then...? Where in the bill, specifically, does the government have that ability to enter into an agreement? Is the minister referring to subsection 6(1)?

**Hon. S. Fraser:** Yes. Both sections 6 and 7, I think, could be referenced here.

**M. Lee:** We will get to a full discussion about section 7. Perhaps I'd invite the minister, at this juncture.... Given we're on to sub (c), if he could just elaborate a little more as to how that would operate, meaning.... When we talk about supporting the affirmation of Indigenous governing bodies....

I think I understand the term "develop relationships with," but in terms of the "affirmation of," what exactly do we mean by that?

[3:00 p.m.]

**Hon. S. Fraser:** It is about recognizing the relationship that we've already got with nations. But also, by enabling government to contract with Indigenous governing bodies — with those entities Indigenous peoples have authorized to represent their section 35 constitutional rights — the government is able to acknowledge the right of Indigenous peoples to determine how they govern themselves. We will go into detail on the specifics of examples and how we're going to do that, in the upcoming sections.

[S. Malcolmson in the chair.]

**M. Lee:** When we say affirmation, what's government's role in that affirmation?

**Hon. S. Fraser:** It's to recognize the Indigenous governance and organizations we work with now but to recognize other Indigenous bodies that may form in the future that we wish to embark into contracts with — that sort of thing, contemplated within sections 6 and 7.

**M. Lee:** Well, working between the language in subsection 2(c) and subsection 6(1), I think what I'm hearing the minister say is that there will certainly be some involvement around looking at Indigenous governing bodies in this province.

Let me again ask the minister, just while we're on this particular section, so we have that understanding when we get to section 6, how the government will determine which Indigenous governing bodies would be affirmed in this province.  
[3:05 p.m.]

**Hon. S. Fraser:** Indigenous governments will follow their own rules and protocols, of course, when forming. That will be their choice. That's, of course, part of self-determination.

For the province, the two key factors in recognizing an Indigenous government for the purposes of this act will be confidence that the constituents of the Indigenous government have freely agreed to this representation and that the government has the capacity to work under this act to participate in the process, if you will, and to be accountable for any decisions that are made.

**M. Lee:** Well, that's helpful to have the two main considerations summarized by the minister as to how the government would make that assessment. On the first day, we had a discussion around Indigenous governing bodies. This is a clear answer around confidence and capacity.

Having said that, if I could ask the minister through what mechanisms government will consider, when Indigenous peoples themselves in a particular territory, as parts of members of a First Nation or a band.... What mechanisms would government consider to be evidence of free authorization or support for an Indigenous governing body coming forward?

**Hon. S. Fraser:** Thanks to the member for the question. The people within the nation authorize who represents them as a governing body and also by what process. I think that's important. That is truly self-determination. We need to be confident, as the provincial government, that we are dealing with the right Indigenous governing body.

The legislation gives us room for that, and it codifies a process that has been going on for many years where the province works with various Indigenous governing structures across the province. I mean, examples I would give of these: confirmed by, maybe, a chief and council, by band resolutions, by assembly resolutions.

There's a clause in the interpretation section that recognizes the diversity of the Indigenous peoples in B.C., including in relation to their distinct institutions and governance structures. We intend to respect that diversity and work with Indigenous nations to understand their particular government structure. Again, there are numerous ways that we could do that. I cited several of them.

**M. Lee:** Appreciate that the effort that we've been having at the committee stage is to get clarity. That's the reason why we've been going over these points: to get that clarity. I think that that response is more clarity than we previously received on the first day in looking at the definition itself.

I would expect that when we talk about codifying the process.... I understand what the minister is saying in terms

of the process around self-determination and the need for ensuring proper authorization by the members and the different mechanisms in which that might occur. But I don't actually see that process codified in the bill itself. Where will that be codified?

[3:10 p.m.]

**Hon. S. Fraser:** This will be considered as we go through sections 6 and 7. In 6 and 7, it lays out the process to determine just how we do this. I cited already, I think, the two key factors that come into play there. I believe we can get clarity. I can start going to those sections now, but I think we can get clarity on that in those sections.

**M. Lee:** Well, let's note that, and we'll come back to those important considerations.

I'm happy to reserve my questions around capacity as well. That is the second main factor: to understand from government what factors will be assessed to determine capacity in order to ensure that First Nations can be — in the words the minister put, I think — held accountable for the responsibilities under these agreements. So let's have that discussion, then, on section 6.

One other question I have, before the member for Abbotsford West has a further question on section 2, is this. I know this was discussed in the precursor to this bill, at length, in terms of timing. But I just wanted to, now that we have a full understanding in terms of the minister's overview as to how, in section sub 2(a), the declaration will be applied to the laws of British Columbia....

[3:15 p.m.]

The discussion we had in subsection 1(4), which is that "nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia," I think is consistent with what the minister has said in the past, which is that to the courts, nothing will delay the continued application of this declaration, in terms of the interpretive nature of the tool that the courts have been utilizing to a certain degree.

Is there any concern that this government has that that purpose of this bill would be interpreted by others, including First Nations, to suggest that when you look at sub 1(4) against sub 2(a), there is a specific purpose of this bill, which is to affirm the application of the declaration — that there is no other purpose than judicial interpretation in the interim?

"In the interim" is while government continues to do the necessary consultation and cooperation with Indigenous peoples and puts in place the action plan. In that intervening period, and while that action plan is being developed and implemented, is there any concern by this government that by virtue of aligning subsection 1(4), which says no delay, in effect, and sub 2(a), there should be any concern by any party in this province that might demand to the government that they're somehow not moving fast enough in terms of the implementation of this declaration? Is there any concern that that might be the case?

**Hon. S. Fraser:** Bill 41 actually creates room for these kinds of conversations, and nations have been working on these issues for a long, long time in the interests of getting out from under the Indian Act. It's an important part of self-determination, and we look forward to working with Indigenous partners, as appropriate.

[3:20 p.m.]

**M. Lee:** I certainly appreciate, again, the spirit of the intention of the bill and working together with First Nations. I think, based on the response from the minister, that the government continues to see this in a very positive light, and I think we all share the optimism and the hope for moving forward in a strong way, in a positive way, for First Nations and all British Columbians, with this bill.

I think what we'll do is we'll come back to this question again from a different perspective, once we continue to look at that in the context of section 3. With that, I'm just going to turn that over to my colleague the member for Abbotsford West.

**M. de Jong:** There's not a lot left with respect to section 2. In the next day or two, I think the Aboriginal forestry, the B.C. First Nations Forestry Council is going to stop in. I don't know if they're meeting with the minister; they may be meeting with the Finance Minister. I had done some work in the past, in previous capacities, around this place. Obviously, it's important to the First Nations that are engaged, many of them, in forestry, and to the province as a whole.

Does the forestry council, the B.C. First Nations Forestry Council, constitute a governing body within the meaning of sub 2(c)?

**Hon. S. Fraser:** I guess that would be a question for Indigenous communities. It's not a question that I'm aware has been asked or answered by Indigenous communities.

**M. de Jong:** Well, I suspect First Nations may well have a view on the matter, but I think the government also will necessarily need to have a view. As we come to the sections about who the government is purporting to enter into agreements with — and, in this context, developing relationships with Indigenous governing bodies — I think it is appropriate and fair to ask the minister whether he and the government consider the First Nations Forestry Council to be a “governing body” within the meaning of the act.

I'm trying to ascertain what the prerequisite is for being a governing body. The minister will undoubtedly know that the First Nations Forestry Council is a society that was established in 2006, a non-profit society that advocates for the role of B.C. First Nations in forest lands and resources and that supports First Nations in advancing their role as stewards.

[3:25 p.m.]

There's a mission statement that I'm sure the minister has seen in the past, and the forestry council seeks to engage with government. I think it's a fair question to ask whether

or not it constitutes a governing body. And in answering, maybe the minister can indicate what some of the prerequisites are to being a governing body, from the perspective of the provincial government. Are we talking about elected bodies? And if so, elected by whom?

I picked this one: (a) they're coming tomorrow, and (b) they have developed a very comprehensive forest revitalization strategy and one that speaks directly to the UN declaration. I am interested — and I'm sure they will be interested — to know whether or not they are considered, within the parameters of section 2 of Bill 41, to be a governing body with whom the government intends to develop relationships.

**Hon. S. Fraser:** I'll begin with the answer to that question, with the definition of Indigenous governing body. It means “an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the Constitution Act...” That's 1982, of course.

At this point in time, we do not view the First Nations Forestry Council as a governing body, under that definition, but we would want to hear from Indigenous communities. That question has not been posed — asked or answered — at this point in time.

[The bells were rung.]

**The Chair:** The bells are now ringing for a vote in the House. I understand that there may be an agreement to continue committee stage of Bill 41 in the House. Is that so?

Our other option is to simply call for the minister's motion to report progress. Sorry, that's not true. Or else we could simply recess and go to the vote.

**M. de Jong:** We would recess. It is not for us to determine where we sit. We take our instructions from the House Leader.

**The Chair:** Then we will simply recess for the vote and return here.

The committee recessed from 3:28 p.m. to 3:39 p.m.

[S. Chandra Herbert in the chair.]

**The Chair:** I'd like to call the committee back into session so that we can shut down this session and move into the bigger chamber.

**Hon. S. Fraser:** I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 3:39 p.m.

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