



3rd Session, 37th Parliament

OFFICIAL REPORT OF

**DEBATES OF THE
LEGISLATIVE ASSEMBLY**

(HANSARD)

Tuesday, November 26, 2002

Morning Sitting

Volume 10, Number 15

THE HONOURABLE CLAUDE RICHMOND, SPEAKER

ISSN 0709-1281

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

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3RD SESSION, 37TH PARLIAMENT

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TUESDAY, NOVEMBER 26, 2002

The House met at 10:03 a.m.

Prayers.

Orders of the Day

Motions on Notice

APPOINTMENT OF H.A.D. OLIVER AS
CONFLICT-OF-INTEREST COMMISSIONER
[1005]

Hon. G. Plant: Mr. Speaker, I call Motion 45 standing in the name of the Premier, which is:

[That this House recommend to the Lieutenant Governor in Council, pursuant to section 14 of the Members' Conflict of Interest Act, R.S.B.C. 1996, c. 287, the appointment of the Hon. H.A.D. Oliver as Commissioner.]

I just wanted to say a few things in support of that motion on behalf of members of the government.

Mr. Oliver was appointed conflict-of-interest commissioner as a result of work done by a committee in 1997. I believe he was appointed in August of 1997. I had occasion to look back at the *Hansard* record of proceedings at the end of July of 1997, when Mr. Bowbrick stood up as the Chair of the committee that was charged with the task of recruiting and selecting a conflict-of-interest commissioner. Mr. Bowbrick had occasion then to say this:

"I am pleased to say that we have unanimously agreed to recommend to this House the name of retired Justice H.A.D. Oliver, a former member of the Supreme Court of this province, a distinguished member of the bench, distinguished counsel, a man of integrity, we believe, and a man who will command the respect of all members of this House as well as all members of the public in this province."

On that basis, the House then was asked to support the recommendation of the committee, and it did so. And in my respectful view, Mr. Oliver has, throughout the term of his five-year appointment, met the expectations that this Legislature had for him when he was appointed.

Earlier this year, I asked Mr. Oliver what his wishes were with respect to continuing to serve. He advised me that he was willing to continue to serve in this position and, accordingly for my part, I formed the view that it was not necessary to ask the House to initiate a selection process. At the time that we pursued this issue in the spring, I had discussions with members on both sides of the House, and I believe there is general support for the reappointment of Mr. Oliver.

That is what I am doing today on behalf of the Premier, moving the motion that is required to be in his name under the act so that we can ensure that Mr. Oliver continues to be in a position to serve the public and, most importantly, to serve the members of this Legislature, as he discharges the duties that are conferred upon the members' conflict-of-interest commissioner under the Members' Conflict of Interest Act.

With that, I look forward to the comments of other members.

J. MacPhail: I want to review the history of the actions of the Attorney General and the Premier over the course of the last six months, the last three days and now. But I want to begin by highlighting the Attorney General's opening comments about how the current conflict-of-interest commissioner was selected. He was selected by an all-party committee of the Legislature who made a unanimous recommendation.

While the conflict-of-interest commissioner is slightly different from other officers of the Legislature, this has been the practice for selecting the conflict-of-interest commissioner as well as every other independent officer of the Legislature. A legislative committee, all-party committee, meeting and selecting.... Even in reappointment, a legislative committee is convened and determines whether reappointment makes sense or not — all-party. That was true of the auditor general, George Morfitt, when he was reappointed. A full select standing committee on determining whether the auditor general should be reappointed was convened.

[1010]

I recall a time when a previous Premier floated an idea about his office appointing directly the conflict-of-interest commissioner. The then opposition, the now government, howled with derision against that Premier. Maybe that Premier, though, has now become the role model for this government. But at the time, not only did the Premier of the day get feedback from his own government caucus that that perhaps was not the way to go, but the opposition — now government — howled with protest. I use that word advisedly.

There was a legislative committee struck, as the Attorney General has just said, and H.A.D. Oliver was selected. I cannot think of another time, given that this conflict-of-interest commissioner legislation has been in place through one, two, three, four successive governments — the Hon. Bill Bennett, Premier of the day; then Bill Vander Zalm, the Premier of the day; Mike Harcourt; Glen Clark; Ujjal Dosanjh.... What are we up to? That's five Premiers now. It's only this Premier that decided to just reappoint without any process whatsoever.

My comments have nothing to do with H.A.D. Oliver — absolutely nothing to do with the advisability of his appointment or not. But this is such an important position. We have had MLAs go before the conflict-of-interest commissioner, and H.A.D. Oliver has ruled with consideration and deliberation on every single matter, so this is not about H.A.D. Oliver.

When the Attorney General suggested that he got up and sought the views of both sides of the House and that there was general support, I'm sorry, he was dead wrong. Here's what happened. Last spring the Attorney General sent over to me a note saying: "I'm thinking of reappointing H.A.D. Oliver as the conflict-of-interest commissioner. Can you think about that?"

I discussed it with my colleague the member for Vancouver–Mount Pleasant, and several days later the

Attorney General and I met in this corner. At that time, I told the Attorney General that the opposition would prefer and will only support a select standing committee to review with the Attorney General — as putting forward Mr. H.A.D. Oliver as his reappointment — or to actually have a complete reappointment process, a search for a new commissioner.

I guess maybe when the Attorney General says general support, he means from his own government caucus. What a surprise that is. The opposition caucus said no to the automatic reappointment of the conflict-of-interest commissioner. Why, Mr. Speaker? Well, the one reason I gave to the Attorney General, while committing support for the current work of the commissioner, is that the current commissioner is beyond the retirement age of pretty much everyone who gets a judicial appointment. I think judicial appointments are 75. In fact, that's what it is. The mandatory retirement for judicial appointments is 75. Mr. H.A.D. Oliver, by his own admission, is well beyond that.

The other factor was that every single other time there's been a reappointment or a new appointment, there's been a legislative committee. So here we are. Let's just proceed. The opposition doesn't hear another thing from the Attorney General until we are told on Thursday, just prior to question period, that a motion will be brought forward and leave will be sought to appoint H.A.D. Oliver. No notice on the order paper. The Attorney General was going to seek leave — we had not seen the motion — and was going to try and get it through that day.

[1015]

I was completely taken aback. Given the comments that the opposition had made to the Attorney General, and then for him to try and somehow ram this through without even proper notice.... It was only when the opposition, with everything else that is the responsibility of the opposition because of the silence of the other members of this House, had to say that we could not, on a procedural matter, let this motion go through without notice by leave....

So here we are today. First of all, the Attorney General misrepresents completely the opposition's point of view given to him. This is what the Attorney General said: "I sought the views of both sides of the House, and there was general support." Let me just say where the opposition caucus's point of view was reflected, then, from the Attorney General.

Interjection.

Mr. Speaker: Order, please.

J. MacPhail: Here we are in a situation....

Interjection.

J. MacPhail: Well, perhaps the Attorney General could have stood up and said: "While the opposition doesn't agree with this...."

Hon. G. Plant: Maybe you changed your mind in the last two hours.

J. MacPhail: Maybe the member could have somehow found out whether the opposition had changed their mind or not. Instead, what he does is try to ram through a motion on Thursday without notice with his 70-odd backbenchers and cabinet standing up in support.

Here we are. In fact, when I discussed this with some government caucus members, that this was what the Attorney General tried to do, they had no knowledge of it — no knowledge of it whatsoever.

Mr. Speaker, in a House, in a legislative chamber, where the only choice is either to support or to vote against, I am put, on behalf of the opposition, in a very awkward situation. This is why: somehow showing a view one way or the other about supporting this motion then becomes a point of view about H.A.D. Oliver. That's not what this is about. It is about the Attorney General completely ignoring the views of the opposition caucus, never consulting us again after we put forward our view that this was not what we wanted to have happen — never consulting us again — and, on Thursday, trying to ram through a motion without notice on this topic. Now here we are.

With the greatest of respect to this chamber, I am left with this. It is with respect that I do this. I will leave the chamber, because I understand that there is no room to abstain. I accept that as the rules of this legislative chamber. Because of the abuse of process, now leading to something that means automatic, without review, reappointment of an independent officer — I should describe it differently; an officer that serves all of the MLAs in this chamber — I am left with no other choice. Thank you.

Mr. Speaker: Speaking to the motion, the Attorney General closes debate.

Hon. G. Plant: Regrettably, the opposition leader has allowed her passion to overwhelm her regard for the facts. Actually, I believe, given the number of people who have served either as conflict-of-interest commissioner or acting conflict-of-interest commissioner, it is the case that only one of those appointments has ever actually come to the floor of the Legislature. That is the appointment of Mr. Oliver in 1997.

The act itself was, I believe, introduced and passed in 1992, at the time when Mr. Harcourt was the Premier. I think that at that point, Mr. Hughes may already have been the commissioner. I wasn't here in those days. It's certainly possible that in one or two respects, my grasp of the details of the history in the early 1990s may not be absolutely accurate.

[1020]

There was a situation where a former Premier sought to impose upon the members by appointment someone who had not at any time been subject to any consideration or search process, and we did — rightly, as opposition — express our concern with that process. That, of course, is not even remotely close to the case of the situation of the incumbent who currently holds this office. That person was appointed by this Legislature

as a result of the work of a committee that did advertise, interview and do all of the work of a committee and then brought forward a recommendation with respect to the appointment of Mr. Oliver in 1997. That's certainly the process that I think should be followed and obviously by custom is, in all likelihood, the process that should be followed, particularly when we're looking for a new conflict-of-interest commissioner.

Interestingly enough, though, as I say that, it's important to point out that that's not a process required by the act. The act does not require that there be a committee. It simply requires that there be a motion of the Premier and the Legislative Assembly and recommendation of two-thirds of the members present. That is the process that we are following here.

When I said in my opening remarks that I believed the motion would enjoy the general support of the members, I said that on the basis of having canvassed the members of the government caucus as well as the opposition caucus. While the Leader of the Opposition has a strong voice and makes it heard on many issues, when it comes to the question of putting your hand up and being counted in this chamber, she has no more vote than any other member in this chamber. I believe that in a matter such as this, when I say general support, it's quite within the bounds of common sense for me to say that if indeed I'm right, general support will be found for this motion. By general support I don't claim unanimous support. I could wish that we had unanimous support. In fact, I do wish that we had unanimous support. But I don't expect unanimity from this opposition on many things.

The member offered an argument that was a re-statement of the argument that she made to me when I raised the issue with her in the spring. She made the point that Mr. Oliver is beyond retirement age for judicial appointments. That's true. He was beyond retirement age for judicial appointments when this House recommended his appointment in 1997. That is how he came to be a retired judge. He had turned 75, and he had retired, as the law requires him to do. In the course of his retirement he had seen that we were looking for a new conflict-of-interest commissioner. He had put his name forward for consideration and had been interviewed, along with others, by a committee, and a recommendation had come forward.

[1025]

I think that we need to step back a bit from the heat of some of the opposition leader's comments and ask ourselves what I believe is the fundamental substantive question, which is whether this House and its members have been served by a man who deserves serious re-consideration for reappointment. I have heard no suggestions to the contrary. Indeed, I think that most members, if not all members of the House — and indeed, if I heard her correctly, perhaps even the Leader of the Opposition — acknowledge that we have been well served by Mr. Oliver. I think that when we are well served, so too is the public interest. We ought to seize on the opportunity presented by that fact and take advantage of the opportunity — the offer, if you will, of

willingness to serve on the part of Mr. Oliver — and to make a recommendation coming from this House to cabinet that he be appointed so that he can continue to serve the members of this Legislature.

Mr. Speaker: Hon. members, the motion before us is that this House recommend to the Lieutenant-Governor-in-Council, pursuant to section 14 of the Members' Conflict of Interest Act, the appointment of the Hon. H.A.D. Oliver as commissioner.

[1030]

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

Hon. G. Collins: I call continued debate on committee stage of Bill 70.

Committee of the Whole House

RESIDENTIAL TENANCY ACT (continued)

The House in Committee of the Whole (Section B) on Bill 70; J. Weisbeck in the chair.

The committee met at 10:35 a.m.

Sections 70 to 73 inclusive approved.

On section 74.

J. MacPhail: This section is entitled "How an arbitration is to be conducted." Section 74 reads: "(1) Subject to the rules of procedure established under section 9 (3) [director's responsibilities], an arbitrator may conduct an arbitration hearing in the manner he or she considers appropriate. (2) An arbitrator may hold a hearing (a) in person, (b) in writing, (c) by telephone, video conference or other electronic means, or (d) by any combination of the methods under paragraphs (a) to (c)."

Perhaps the minister could outline for us how he thinks this is going to work.

Hon. R. Coleman: As we do it now, actually. We do have options. We do actually do arbitrations in writing. We also do them by telephone conference in areas of the province where travel is difficult. We don't have an arbitration office in every community, so we actually do allow for that to take place now.

J. MacPhail: Why is the word "may" used there?

Hon. R. Coleman: Because it's permissive. It allows for the options to be there so that we can have those options available. If you were a landlord or tenant up in Fort Nelson, you would hardly want to travel to Prince George to hold an arbitration hearing when you could do it by video or telephone conference and submit your position, if necessary, documented in advance

of the arbitration. It's really permissive to allow this to happen.

J. MacPhail: What are the circumstances under which it is mandatory to hold an arbitration?

Hon. R. Coleman: An arbitration can be held for a number of reasons under the act. We canvassed this in detail. Some are where a tenant or a landlord applies for an arbitration within ten or 15 days, depending on which section of the act they're dealing with — or if the director directs that arbitration should take place on a particular issue. The whole issue around the arbitration.... Depending on the section or what the issue is, it has certain provisions in it that say that a person, after receiving notice under specific sections of the act with regards to the end of a tenancy or difficulties with their relationship, can file, within a certain period of time, a request for arbitration. Then the arbitration takes place.

J. MacPhail: Who gets to decide the method by which the hearing is held?

Hon. R. Coleman: My understanding is that the director is the person that can make that decision.

[1040]

J. MacPhail: Let me just tell the minister why I'm raising some of these concerns. If a hearing is held in.... Well, first of all, perhaps the minister could clarify: are hearings held in writing now?

Hon. R. Coleman: No, not a complete hearing, but we do have submissions in writing. Sometimes subsequent to a hearing taking place, the director or the arbitrator may ask for additional information in writing. That's why the holding of a hearing is identified in sub-subsection (d), being a combination of methods under sub-subsections (a) to (c), which allows for the ability to have those options or portions of those options available to the arbitrator.

J. MacPhail: I'm wondering whether the minister can say whether there's been any experience in conducting hearings where writing is one method that's used in terms of how it affects people whose first language is not English.

Hon. R. Coleman: It's not our intention to hold entire hearings in writing. That's why the combination of methods is outlined in paragraphs (a) to (c). Clearly, if someone has difficulty with literacy skills, with English not being their first language or with not having English at all as their language, as in the past, we've made available other options for them to be able to deal with the issues in and around tenancies. We take that into account when we deal with arbitrations, and we do that today.

J. MacPhail: Is the minister saying that those practices will continue under the new legislation?

Hon. R. Coleman: Yes, they will. They would be dealt with, if necessary, either in policy or in regulation before the act comes into place.

Sections 74 to 94 inclusive approved.

On section 95.

[1045]

J. MacPhail: Mr. Chair, this is the section under the division entitled "Division 3, Offences, Penalties and Regulations." Section 95 lists the offences and penalties. Can the minister just advise quickly what new penalties are added from the old act or what penalties have been deleted from the old act?

Hon. R. Coleman: The new sections would be 91(1)(a) and 91(1)(j). The old act, actually, doesn't allow for the quickest comparison for staff as one would think, because it gives only the sections. It doesn't actually define what it has to do with — like we have in this act, for instance — whether it's seizing or interfering or assignment and subletting, with the subsections listed in this section. If there's any further information the member would want, we will get that to her.

J. MacPhail: Perhaps I'll tell the minister what I'm thinking here and why I asked that question. I think it's fair to say that both tenants' rights representatives and landlords — groups representing both those interests — have complained in the past under the old act that while there's an offence provision in the law, it has often lacked teeth. In fact, I'm told there have been only a few prosecutions, and I don't think there has been any fine levied. Could the minister perhaps recount for the record the past history under the previous act with offences and penalties?

Hon. R. Coleman: That is one of the issues on both sides of this thing that we've had some concern with. I don't think it's so much that the legislation lacks the teeth as it is getting a decision by Crown counsel to proceed with an offence under, I would suspect, the Offence Act with regard to breaches of the act. We have been on record for a long period of time — or I have been, both in opposition and in government — that offences under this act sooner or later have to be....

We will want to prosecute, simply because we feel we're going to send a significant message to industry that we're serious about how this act should be managed and how they should have their responsibilities to it, particularly on the offences outlined here with regard to the behaviour of landlords. Sooner or later, if we are going to have people who think they can abuse the system, I would like to see that we can get the Crown to proceed with prosecution in a case whereby somebody is abusing the rights of the act.

I think that would send a more significant message than any penalty section would, simply by the fact that we would actually get a prosecution. Industry would realize we're serious about this. There's no question

that one of the difficulties under the previous legislation and in the historical perspective of this is the lack of prosecution with regard to offences under this act. We will certainly endeavour, if we do have offences, to try and get Crown to proceed with charges where it's applicable.

J. MacPhail: In the past, there have been Crown prosecutors, Crown counsel assigned to a particular realm of legislation — the Forest Practices Code, for instance. Has the Solicitor General had any discussions about following a like model when it comes to pursuing prosecutions under this legislation?

[1050]

Hon. R. Coleman: Not for a specific assignment to the Residential Tenancy Act, because there's no history of requiring a full-time prosecutor to be looking at issues under this act. What I've said and what we will do as we move through regulation while we bring this act in, certainly, is that it will be part of the discussions we have with the director and with our staff. As we move forward, if we do have people that are in abuse of this act, we will be — I guess the description would be — much more aggressive in trying to pursue prosecution in cases where it's warranted.

J. MacPhail: Yes, and I fully understand that assigning a full-time Crown counsel to something like this.... There just aren't the resources available. But I would urge the Solicitor General to pursue a specialty, even if it's not a full-time specialty, in this area.

Sections 95 and 96 approved.

On section 97.

J. MacPhail: Section 97 is the power to make regulations. I note that.... Let me just read this, Mr. Chair: "97 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act. (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows: (a) exempting tenancy agreements, rental units or residential property from all or part of this Act."

Now, I've had some concerns raised that there could be exemptions — in the area of B.C. Housing, for instance — from this act. What about secondary suites? Are they guaranteed coverage? What is the thought behind this particular regulation?

Hon. R. Coleman: This is actually in the current act, and it hasn't been abused. I think the only exemption that may exist today with regards to this would be the rent-geared-to-income portion of a B.C. Housing agreement. The B.C. Housing units are exempted from rent increases because they're rent-geared-to-income and tied to operating agreements, but the actual behaviour within the tenancy agreement outside of that is covered by the act.

The other thing is that what we've done in this act is to actually make some significant changes with regards to how tenancies will be viewed in this province. Secondary suites are actually protected in a tenancy agreement that will be deemed to be in place under the act, that will be prescribed by regulation or, if the landlord and tenant actually enter into one, as long as it doesn't go outside the realms of the basic tenancy agreement, that would be a different tenancy agreement that the landlord and tenant could have.

We chose to do it that way so that we wouldn't get into the discussion as to, you know, having our arbitrators decide whether there was a secondary suite that was legal or illegal. Our position was that any tenancy is a tenancy, and the standard-form tenancy agreement applies if there's no tenancy agreement in writing. Therefore, secondary suites are covered under the act.

J. MacPhail: Is this provision identical to the previous act?

[1055]

Hon. R. Coleman: Yes, it is, hon. member. Actually, it is probably even a bit more permissive than this one is, because it says "exempting a landlord or tenant or class of landlord or tenant from a provision of this Act." This section is exempting tenancy agreements from all or part of this act, but the standard-form tenancy agreement applies, so it's only when we're specifically dealing with something like the B.C. Housing situation versus another. I think that the language in the previous act was a bit more permissive than this is. So, if anything, it's a bit tighter, but it is basically in both acts.

Sections 97 to 107 inclusive approved.

On section 108.

J. MacPhail: Section 108 is a consequential amendment to the Human Rights Code. It changes section 10(1) of the Human Rights Code of 1996 by amending that section by striking out "or age" and substituting "age or lawful source of income." Just to explain, section 81 of the old act made it unlawful to discriminate on the basis of lawful source of income. While this is covered in the Human Rights Code, it should be referenced in the Residential Tenancy Act to ensure that low-income tenants have access to housing. Perhaps the minister could first explain this consequential amendment.

Hon. R. Coleman: I will try and get this right. It was put in the Residential Tenancy Act initially because the Human Rights Code was under review at the time. The government decided to put it in the Residential Tenancy Act because there wasn't completion on the human rights side. Complaints, however, still went relative to the Human Rights Code to human rights for enforcement and dealing with it. What this does is basically move it from the Residential Tenancy Act over to where it belongs in the Human Rights Code, because

that's where all the enforcement and the complaints would go with regards to this provision. Now that the Human Rights Code isn't under the same review as it was in 1996 when this was put into the act, we feel that it can go there.

J. MacPhail: Just to be clear, I want to make sure the order is right. The prohibition against discrimination based on source of income was first contained in the Residential Tenancy Act, and then the Human Rights Code, subsequent to that, was amended to include prohibition against discrimination on the basis of source of lawful income?

Hon. R. Coleman: No. This is actually the amendment that makes that move from the Residential Tenancy Act to the Human Rights Code. That's what this amendment does — what you've just described.

[1100]

J. MacPhail: Okay, because one of the advantages of plain-language legislation is that it not only allows people to interpret the legislation properly but also allows people to be informed of their rights and their responsibilities. Is the Solicitor General now saying that people who read the Residential Tenancy Act will no longer be informed that you cannot discriminate against a person because of their source of lawful income?

Hon. R. Coleman: The Human Rights Code already has a section that deals with discrimination in tenancy. This is just moving a small portion of what should be in the Human Rights Code to where it belongs, versus actually being in the Residential Tenancy Act. That decision was made in '96, and it was intended.... As I understand it, it would go to the Code at an appropriate time. I guess it didn't get done, and now we're just cleaning that up. It's all in the Human Rights Code as to what discrimination you can't have with regards to a tenancy. Certainly, source of income is one of those things you can't discriminate on.

J. MacPhail: I'm glad we got that clarification, but it still comes down to the point that a person looking at the Residential Tenancy Act will no longer be made aware that one can't discriminate on the basis of source of income. I think that's a weakness of the legislation. It in no way lends to the explanation of what people's rights are, as well as responsibilities.

Perhaps the minister has had this discussion with the member for Vancouver–Mount Pleasant. In this particular area, what education will be provided to both landlords and tenants on this prohibition?

Hon. R. Coleman: We actually contain this information in our material now, and we will continue to do so, so that it is clear for both landlords and tenants in the handbooks that are made available to them.

My experience in residential tenancy is that those materials are what people refer to with regards to their rights, and we will make sure that it is in the material.

Sections 108 to 117 inclusive approved.

Title approved.

Hon. R. Coleman: I move that the committee rise and report the bill complete with amendment.

Motion approved.

The committee rose at 11:02 a.m.

The House resumed; Mr. Speaker in the chair.

Reporting of Bills

Bill 70, Residential Tenancy Act, reported complete with amendment.

Third Reading of Bills

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

Hon. R. Coleman: By leave, now, hon. Speaker.

Leave granted.

[1105]

Third reading of Bill 70 approved on the following division:

YEAS — 64

Coell	L. Reid	Halsey-Brandt
Hawkins	Cheema	Hansen
J. Reid	Bruce	Santori
van Dongen	Barisoff	Roddick
Wilson	Masi	Lee
Thorpe	Hagen	Murray
Plant	Collins	Clark
Bond	de Jong	Stephens
Abbott	Coleman	Chong
Penner	Jarvis	Anderson
Orr	Harris	Nuraney
Brenzinger	Belsey	Bell
Long	Chutter	Mayencourt
Trumper	Johnston	Bennett
R. Stewart	Hayer	Christensen
Krueger	McMahon	Bray
Les	Locke	Nijjar
Bloy	Suffredine	Cobb
Visser	Lekstrom	Brice
Sultan	Hamilton	Sahota

Hawes Kerr Manhas
 Hunter
 NAYS — 1
 MacPhail

Bill 70, Residential Tenancy Act, read a third time and passed.

[1110]

Hon. G. Collins: I call committee stage debate of Bill 71.

Committee of the Whole House

MANUFACTURED HOME PARK TENANCY ACT

The House in Committee of the Whole (Section B) on Bill 71; J. Weisbeck in the chair.

The committee met at 11:13 a.m.

On section 1.

J. MacPhail: If the minister could bear with me, some of this may be.... We had the discussion first, and it's not necessarily by section. I've had a substantial amount of feedback from manufactured home park tenants. I'm trying to just raise their issues in a way that shines some light on them.

[H. Long in the chair.]

The first issue, though, under section 1, the definitions, is that the people who actually live in manufactured home parks think that the term "site" doesn't really reflect.... They have concerns that it doesn't actually really reflect what's on the ground, literally. They thought that changing the term "site" to "lot" would be more descriptive of what's being rented and thereby make the act easier to understand.

Here's what their concern is. Particularly under sections 13(2)(c) and 23, there's a reference to how the manufactured home site affects other issues. They wanted to make it clear that the land being rented is the lot and not just the space under the home.

[1115]

Hon. R. Coleman: Mr. Speaker, through to the member, I do have a number of amendments, as you know, so we'll deal with those.

We actually consulted on "lot" versus "site," and the difficulties we've run into are these. "Lot" is often used in a land base, basically as a legal description under land titles when we describe a lot and its boundaries, etc., versus "site," which is the area that could be defined in the tenancy agreement of not just being the pad but also the area around — like the yard around the manufactured home.

As we move forward with a term of tenancy agreement that we would put into regulation, we would allow for a section that would actually define within it the lot area or the site area, which would be the area around the manufactured home, so it's required to be set out in the tenancy agreement. Our tenancy agreement, which will be the standard form, will have it set out so that it can be set out in the tenancy agreement. There was concern, as we went through those discussions, about those two terms, frankly, and that's why we selected "site" over "lot."

Maybe I could move the amendment that I have sitting with the Clerk.

[SECTION 1, in paragraph (b) of the proposed definition of "tenant" by deleting "a former tenant" and substituting "a former or prospective tenant."]

I move that amendment.

On the amendment.

J. MacPhail: I support this amendment. Perhaps the minister, for the record, could explain it.

Hon. R. Coleman: Mr. Chair, yes. Sorry, I was just clarifying in my mind what it was. Really, it parallels Bill 70 that we just passed, and what it allows for is a prospective tenant to recover fees that would have been charged that shouldn't have been charged to the tenant prior to actually taking occupancy.

Amendment approved.

Section 1 as amended approved.

J. Bray: I seek leave to make an introduction.

Leave granted.

Introductions by Members

J. Bray: Today joining us in the gallery of the House are 26 grades 4 and 5 students from Vic West Elementary School, along with their teacher Ms. Morrison and her colleague Ms. Burley. They're here to see what's going on in the Legislature and to learn a little bit about politics. I'd ask that the House please make them all very welcome.

Debate Continued

Sections 2 and 3 approved.

On section 4.

Hon. R. Coleman: I move the amendment to section 4.

[SECTION 4, by deleting the proposed paragraph (b).]

Having had a look at the act, as we've gone through this, and our feedback, an RV on a lot is more like a licence to occupy than a tenancy. There's concern that it

would cause some confusion in the industry, so we're proposing to delete subsection (b).

On the amendment.

J. MacPhail: So the act will now apply to a manufactured home site that is occupied primarily for recreational purposes by a recreational vehicle or travel trailer?

[1120]

Hon. R. Coleman: That's the confusion. It will apply in the case where there's a tenancy agreement in place, but where it's just used for recreational purposes, like day to day or week to week, then it won't apply in that situation. If there's a tenancy agreement in a manufactured home park between a person that's occupying a site and the landlord — whether it be an RV, a motor home or whatever the case — the tenancy agreement will apply. It's to take out the confusion between the two.

J. MacPhail: I have another question on section 4(c). Section 4 is entitled "What this Act does not apply to." Section 4 reads: "This Act does not apply with respect to any of the following:...(c) prescribed tenancy agreements, manufactured home sites or manufactured home parks."

This seems a bit unusual to have in an act that infers rights and responsibilities — then to have a broad exemption from it. Does this allow regulations to exempt individual agreements or certain types of agreements?

Hon. R. Coleman: My understanding is that it goes back to the same discussion we had in the previous act. Basically, it allows for some reg-making powers in cases where there might be something that is different, like we did in the last act when we were discussing the thing with regard to B.C. Housing. My understanding is that it just allows for reg-making powers, if necessary, if we have some — I guess you could call it — hybrid of a tenancy where we need to deal with something with regard to it. These could, over a period of time, convert to long-term leases or whatever the case may be, so there has to be some ability and reg-making power to allow for exemptions.

J. MacPhail: Can the Solicitor General reassure the public that this section doesn't negate the intent of the act to protect renters of manufactured home lots?

Hon. R. Coleman: Absolutely. I'm more than pleased to make that statement that it does not negate the residential tenancy. Basically, the act itself is here with tenancy agreements that would be prescribed in regulations so that everybody will know what is going on here. This is strictly a section that is in both pieces of legislation so that there is the ability to make reg-making powers in areas where there may be the need for exemptions. We can't actually give you an identi-

fied reason that it would be used for, other than the fact that it was suggested through our discussions on legislation that we should have the ability in regulation to do that.

Amendment approved.

Section 4 as amended approved.

Section 5 approved.

On section 6.

J. MacPhail: Section 6 of the Manufactured Home Park Tenancy Act deals with enforcing rights and obligations of landlords and tenants. Again, under 6(3)(b) we have the term "unconscionable." Again, people who live in manufactured homes on site are very concerned about this term. They ask this: what if sections of this new act are under the legal use of the term "unconscionable"?

For instance, one section that comes to mind is section 42. I'll just read the headline of 42: "Landlord's notice: landlord's use of property."

[1125]

Let's say the landlord is legally being allowed to make a windfall profit while the homeowner loses in a big way. Again, we have a situation here in the manufactured home parks where the person owns the home, literally, but rents the lot or, as we're now calling it, the site. It's different than a tenancy — there's no question about it — or a renter's situation. Perhaps the minister could put that in the context of the term "unconscionable."

Hon. R. Coleman: Just so we understand, there will be a standard form of tenancy agreement that will be established in regulation and will set out the terms of the tenancy between landlord and tenant under this act, which will be a first. That doesn't exist today, and I think it's important in consultation with both the homeowners and the landlords as we move forward.

This particular relationship, just so the member understands, is probably more of a work in progress as far as the consultation and regulation than residential tenancy, because historically it's been tied back to a different act. A lot of issues in this area of tenancy just didn't get dealt with by regulation simply because it was buried in a larger tenancy act.

On the "unconscionable" thing, I guess you can have a number of things that might be described as unconscionable. Certainly, the first thing that came to my mind when the member asked the question is that if there's a common internal road and you're denied access to the road, you don't get access to your residence. I think we will define that in the tenancy agreement, and we will put that in regulation so that those types of things cannot happen.

As we go through our consultative process, we will make sure we have a tenancy agreement that works, particularly on the relationship between landlord and

tenant, for the tenant. As the member has clearly stated, this is a different form of tenancy. You're renting the dirt, not renting the actual unit, so there's a whole different relationship that exists here.

That's why I made the move initially to move the act into its own area. We can go through that consultative process in our development of regulation and get to where balance can be achieved between the landlord and tenant as we move forward to a standard-form tenancy agreement. There's no question that that is the concern about the relationship as far as the stability of access and the ability to have water and sewer hooked up, because that's what you're relying on. You're relying on three things when you put your home on the site, and those are water, sewer and electricity. For any of those things to be denied would be unconscionable. We'll certainly define those things in our tenancy agreement in consultation, but we'll make sure it's there.

J. MacPhail: While the minister is doing that, I would just ask him to make sure he refers to the *Stiles v. Tod Mountain* case that's on equity. It is specifically around manufactured homes and the rules. What this case deals with is the take-it-or-leave-it attitude that, particularly with the manufactured home park, demonstrated an inequality of bargaining power. I just make note of that for the minister, as he is further consulting.

Sections 6 to 12 inclusive approved.

On section 13.

J. MacPhail: Section 13 is "Requirements for tenancy agreements." Section 13(2)(c) again refers to this "site" versus "lot."

We've had a discussion on this, but I bring it to the minister's attention — lot — although I am advised that perhaps municipal bylaws refer with the term "site." I appreciate that, but in terms of language, lot is easily understood. A site could refer to the park street address, as that is the site for a home — the whole park street address — so just requiring a lot number is not enough to identify the property being rented. I will take the minister at his word that he is going to ensure in regulation that there will be a means of identifying the boundaries of the area — the lot, the site — being rented.

[1130]

Hon. R. Coleman: They're actually required to do that under the tenancy agreement regulation right now, and we are going to continue that practice and make sure that takes place.

I would move, under section 13(2)(g), the amendment that stands in my name with regard to this particular piece of legislation.

[SECTION 13, in the proposed subsection (2) (g) by deleting "if a park committee" and substituting "if a park committee or the landlord".]

Both groups sort of identified to us that in some cases there isn't a park committee, and the rules are actually established through a tenancy agreement between the landlord and tenant when they come in. That's the reason for that amendment to that section.

Amendment approved.

Section 13 as amended approved.

Sections 14 to 17 inclusive approved.

On section 18.

J. MacPhail: I note that there are several amendments to section 18. Perhaps the minister could explain his amendments.

Hon. R. Coleman: Yes, I can, actually. It was our mistake in the drafting. We don't allow pet deposits under this act, so people thought it was pretty confusing that we'd actually start to talk about how pet deposits would be handled within this section when we don't actually allow them to begin with. There was no need for subsections (1), (3) and (4) with regards to the whole issue in and around pet deposits because it's simply not allowed. That's why we're deleting those subsections of that section.

J. MacPhail: The logic behind not demanding pet deposits here versus in an apartment building or a residential tenancy agreement is?

Hon. R. Coleman: The reason for it is because the home itself is owned by the resident. The majority of damage made by pets that we've ever experienced or that people gave us feedback on is to the actual home itself and not to the site. Therefore, in a tenancy agreement they can outline the behaviour of pets with regards to being in a park. For instance, if they have an area where they want the dogs to be walked or whatever, they can make those arrangements. We didn't think it was correct to actually try and tell people whether they should, in a home they actually own, be told whether they can or cannot have a pet. We felt that was the difference in this type of tenancy versus one where the actual building and unit are owned by the landlord — versus the land being owned by the landlord.

J. MacPhail: I agree wholeheartedly with the amendments, as far as they go. The minister is quite correct: the tenants do own the home. He has acknowledged that what they do or keep in their home is their business, as long as it doesn't adversely affect others as a health, safety or nuisance....

Now, they are also responsible for the upkeep of the lot, and they have exclusive possession of the lot they rent. They also pay taxes toward the bylaw enforcement officer that deals with pet problems. They also pay a licence fee to the local jurisdiction. Given all

of those facts, why is the minister still maintaining that a tenancy agreement may include terms or conditions doing either or both of the following: (a) prohibiting pets or restricting the size, kind or number of pets a tenant may keep on the manufactured home site and (b) governing a tenant's obligations in respect of keeping a pet on the manufactured home site?

[1135]

Hon. R. Coleman: Basically, this allows for the landlord and tenant to enter into the tenancy agreement in one relationship or the other — that is, the park is a park that doesn't allow pets or a park that does allow them — to basically outline the size and number of pets kept on the site.

The big issue here is probably how the animals are kept under control on the property outside the unit rather than inside the unit. We put this — this is the same for both acts and allows for — in the tenancy agreement to allow for the terms. If you don't identify that you can actually prohibit, then you're back to that discussion in and around whether you're going to have an argument in court, because there's nothing identifying that people can or cannot do certain things. That's why that is in the act.

Our experience under this act will be, I'm sure, that we will see that pets are allowed. It's just that they will be included in the tenancy agreement as to the size and number. To have an excessive number of animals on a particular site, which is really not as large as most city lots would be, could cause some difficulties with regards to the relationship between tenants — relative to noise and those type of things. There has to be some ability for them, in the tenancy agreement, to come to an agreement which they prefer — and the relationship within the park.... Having said that, none of the existing relationships with regards to pets would be affected by this act in that they could go back and change the rules, and then people who were allowed to keep pets up until now would not be allowed to keep pets.

J. MacPhail: Mr. Chair, given the minister's explanation on all of section 18, it would make sense that 18(2) now read only this: "A tenancy agreement may include terms or conditions doing either or both of the following: governing a tenant's obligations in respect of keeping a pet on the manufactured home site." That would make perfect sense. But the fact that the language of this legislation permits a prohibition by a tenancy agreement for having pets simply cannot be supported by the opposition, and therefore we cannot support this clause.

The Chair: Minister, we're discussing the amendment. Have you put the amendment forward?

Hon. R. Coleman: Oh, thank you, Mr. Chair, and thank you to the Clerk, who told me a couple of minutes ago. I was listening to the Leader of the Opposition and subsequently forgot.

I move the amendment to section 18 that sits in my name with the Clerk:

[SECTION 18, by deleting the proposed subsections (1), (3) and (4).]

Amendment approved.

Section 18 as amended approved on division.

On section 19.

Hon. R. Coleman: On section 19, I have an amendment, adding a renumbering with what's stated there as subsection (1) and adding subsection (2), which states:

[SECTION 19: by deleting the proposed section 19 and substituting the following:

Prohibited terms of a tenancy agreement
(19)

(1) A tenancy agreement must not include a term that provides that all or part of the rent payable for the remainder of the period of the tenancy agreement becomes due and payable if a term of the tenancy agreement is breached.

(2) A tenancy agreement must not include a term that provides that the tenant must engage the landlord as the tenant's agent in the sale of the tenant's manufactured home.]

I move that amendment, and then I will speak to it.

Amendment approved.

Hon. R. Coleman: I would like to say a couple of words even though we have passed the amendment. That is that what we wanted to do if it was possible — but we needed some changes to the Real Estate Act — was actually to identify that a manufactured home could only be sold in a park by a licensed realtor, who would do a property condition disclosure statement on sale, or by the owner themselves.

There has been a practice where, in some parks, the landlords actually charge a commission for the person who wants to sell their unit and have their tenancy agreement signed over. We think that was a practice that should not be allowed. We think it's a significant change for the protection of the rights of the tenant with regards to their home. Since we couldn't put it in the Real Estate Act — we tried to get that done in advance of this legislation — we decided that at the very least we would put it in this act to make it very clear that this practice can't continue. In the spring we hope, as they redo the Real Estate Act, to deal with this in its more global sense.

Section 19 as amended approved.

On section 20.

[1140]

J. MacPhail: There are some who are worried that under section 20, the rules about payment and non-payment of rent, there should not be any person in danger of losing their home because they prefer to pay

their rent in cash or cheques on a monthly basis. Therefore, there should be no requirement for occupancy that says that you have to have post-dated cheques. Does the minister agree?

Hon. R. Coleman: With regards to post-dated cheques, it's only if the tenant agrees with the landlord or it's a condition in the tenancy agreement that has been agreed to by the parties. Section 20 really lays out that a landlord must provide the tenant with a receipt for rent paid in cash and the payment in due. It also has a section that deals with whether or not they pay in accordance with the tenancy agreement, the landlord must not seize the manufactured home or prevent or interfere with the tenant's access to the tenant's personal property. We do allow for post-dated cheques under the act, but it has to be in a tenancy agreement or by agreement between landlord and tenant.

Sections 20 to 23 inclusive approved.

On section 24.

Hon. R. Coleman: This is something we did in the other legislation, as well, that was identified to us as we went forward. It is to amend:

[SECTION 24 (2), by deleting the proposed paragraph (a) and substituting the following:

(a) a candidate seeking election to the Parliament of Canada, the Legislative Assembly or an office in an election under the Local Government Act, the School Act or the Vancouver Charter, or]

This is to deal with an issue that was brought to our attention by the member for Vancouver–Mount Pleasant in the last debate and also had been brought to our attention by other people — that there should be more clarity in what the access was for somebody that was seeking public office. I move the amendment under section 24(2).

Amendment approved.

Section 24 as amended approved.

Section 25 approved.

On section 26.

Hon. R. Coleman: I move the amendment that's under my name.

[SECTION 26, by adding the following subsection:

(5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.]

Amendment approved.

Section 26 as amended approved.

On section 27.

[1145]

J. MacPhail: Section 27 deals with emergency repairs. I note that the emergency repairs definition does not include repairs to services and property provided by the landlord. Why?

Hon. R. Coleman: I don't think that it actually deals with a specific repair, whether it be tenant or landlord. I think it's emergency repairs, which I would obviously.... Under sub-subsection (c) we're talking major leaks and pipes damaged or blocked water or sewer pipes. Those are certainly underground and above-ground. Some of them would be the landlord's. Some of them could be the tenant's if they're in the actual residence, which under those circumstances probably wouldn't be as big an issue as if the sewer pipe or the water line broke. Therefore, it would be the landlord that would have to move forward and do the emergency repairs. I'm not quite sure what the member's concern is with it, and maybe she could be a bit....

J. MacPhail: Why, under 27(c), does the emergency repair section for the purposes of repairing not include electrical systems?

Hon. R. Coleman: If the member wishes.... Actually, we did discuss this in the previous legislation, and it was our intent to add "electrical" by making amendment to the section, but we don't have the amendment ready.

We could actually stand down 27(1)(c)(ii) and get an amendment, or if the member wishes, we could make an amendment adding electrical repairs now.

Mr. Chair, I might rely on you for some direction here. I'm prepared to seek leave to make that amendment to include electrical as part of the three items under sub-subsection (c).

The Chair: Is it the wish of the committee to stand down section 27?

Some Hon. Members: Aye.

The Chair: So ordered.

On section 28.

J. MacPhail: Section 28 deals with the issue about assignment and subletting. Now, this is what I received from a manufactured home renter, or tenant. The landlord had rented them their lot for permanent housing. Therefore, they should have the right to automatically assign the lot with the sale of the home. The value paid for the home is based on the location of the home on the lot and in the particular park. If that was not the case, then they should have been able to buy the home at factory prices and not at dealer prices. What assurance can the Solicitor General offer this person?

[1150]

Hon. R. Coleman: There's already an assignment and sublet regulation that outlines the whole assign-

ment issue. It limits the grounds on which the landlord can actually refuse that assignment to take place.

Section 28 approved.

On section 29.

J. MacPhail: Section 29 talks about moving insurance or bond, and it refers to a prescribed form of security against damage caused by the move. I have a question. What is the prescribed form of security? Is there recovery of the security, or is it a permanent charge that stands?

Hon. R. Coleman: This would be set in regulation, but it is basically not an ongoing insurance bond. What it is, is this. If you're moving something in or out of a park, normally the person that would be moving it would provide the proof of insurance or bonding to protect against third-party liability — if the home did damage to, let's say, the power lines or something on its way in or out of the site. It just basically prescribes that that has to take place or that it can be asked for. We would set in regulation what that is. It's not an ongoing thing. If it takes a day to move it, it's that day. It's not something that goes on and on and on for years to come. It's only for the move in or the move out.

J. MacPhail: Thank you. I'll just make note for the Legislature that there was an example of a park in Powell River that required a woman wishing to move her home to pay a non-refundable deposit — a non-refundable deposit — of \$1,000 before the landlord would permit the move. Everyone's hoping that this section will now prevent that kind of action. Moving of these homes in almost every case requires a licensed mover and moving permits. The truckers are licensed and insured. I hope this section will now prohibit the situation that the Powell River woman faced.

Hon. R. Coleman: Just for clarification for the member, this section doesn't do that, but this act does. That would be considered a deposit, and a deposit outside of what's prescribed is not acceptable and cannot be charged, and so the person in Powell River would not be.... I mean, we would have a manufactured park owner who would be basically breaking the law, and we would be dealing with it in that way. It is certainly not the intent to have these.... As the member has mentioned, this is one example of a number of sort of artificial charges that some landlords in manufactured parks have decided they will ask people for or take from people in order for them to have the right to occupy property. Those, frankly, are not available to them anymore under this legislation.

Sections 29 and 30 approved.

On section 31.

[1155]

J. MacPhail: Section 31 establishes park committees, and the committee will be made up of a landlord and tenants of a manufactured home park. I just will bring to the minister's attention that sometimes these committees become too easily dominated by the landlord. Many stakeholders have said that park committees have become so dominated by landlords that the landlord has basically a veto on this committee. So while I agree with others who say there should not be an elimination of committees altogether, it is important that this act be interpreted and enforced in a way that actually gives some meaning to these park committees.

Perhaps the fact that very few landlords and homeowners even know about these committees could be a tool by which the ministry could educate manufactured home park owners and tenants but, clearly, also allow the tenants to have equal say and voting rights as does the landlord.

Hon. R. Coleman: The member has highlighted one of the difficulties in this form of tenancy. We will establish in regulation what these park committees, if they're in existence, can or cannot do. The challenge, of course, is that there's always the situation whereby a park committee cannot be empowered to actually make the landlord spend dollars. It ends up more of a discussion about rules within the park. In some cases those rules within a park become something that's either unenforceable or not workable.

The other thing we used to have or that we do have now is some form, almost, of mediation that takes place. We used to have another process prior to this act, and we still do today actually, where people would come in who had a problem with changes to their tenancy or whatever the case may be. There could be a ruling, and then the parties would run off to arbitration anyway because they had the ability to do that. We found that that part of it is unworkable.

When we get into section 32 in a second, I'll make a couple of amendments which basically identify that one of the things in the language is that if there is no park committee, then the park rules can be established by the landlord. All of this will, as we go through the standard form of tenancy agreement, be part of establishing that standard form of tenancy agreement so that we don't get too far down the road. We will actually have to develop, I think, a set of sort of standard park rules that then can be added to. There should be some standard form of park rules.

The member's correct. This is a difficult area that almost works like somewhere between bare-land strata and a tenancy. That's why we have the difficulty with it.

Section 31 approved.

J. MacPhail: Mr. Chair, I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 11:58 a.m.

The House resumed; Mr. Speaker in the chair.

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

Hon. R. Coleman moved adjournment of the House.

Motion approved.

The House adjourned at 11:59 a.m.