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5TH SESSION, 37TH PARLIAMENT

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THURSDAY, OCTOBER 7, 2004

The House met at 10:04 a.m.

Prayers.

[1005]

Orders of the Day

Hon. G. Collins: I call Committee of the Whole for consideration of Bill 69.

Committee of the Whole House

FINANCE STATUTES AMENDMENT ACT, 2004

The House in Committee of the Whole (Section B) on Bill 69; J. Weisbeck in the chair.

The committee met at 10:06 a.m.

Sections 1 to 45 inclusive approved.

Title approved.

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

Motion approved.

The committee rose at 10:07 a.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

Bill 69, Finance Statutes Amendment Act, 2004, reported complete without amendment, read a third time and passed.

Hon. G. Collins: I call Committee of the Whole for consideration of Bill 70.

Committee of the Whole House

PROPERTY TRANSFER TAX
AMENDMENT ACT, 2004

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

The committee met at 10:09 a.m.

Sections 1 and 2 approved.

Title approved.

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

Motion approved.

The committee rose at 10:10 a.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

Bill 70, Property Transfer Tax Amendment Act, 2004, reported complete without amendment, read a third time and passed.

Hon. G. Collins: I call Committee of the Whole for consideration of Bill 62.

Committee of the Whole House

ATTORNEY GENERAL
STATUTES AMENDMENT ACT, 2004

The House in Committee of the Whole (Section B) on Bill 62; J. Weisbeck in the chair.

The committee met at 10:11 a.m.

Sections 1 to 10 inclusive approved.

On section 11.

B. Bennett: I wonder if I could ask the minister to provide some background on the changes to the Estate Administration Act. It seems like a fairly straightforward change — changing the \$10,000 maximum to \$25,000 — but clearly, there must have been some background to get us to this point, because the \$10,000 limit has been there for a long, long time. Is there some background?

Hon. G. Plant: The background arises out of the member's last comments. The number has remained unchanged for nearly a generation, and obviously, over time inflation gradually erodes the value of things. I received a request from a lawyer in the private bar a year or so ago, pointing out that some of his clients were faced with the situation where they had to basically follow the complete process for obtaining probate in situations where the value of an estate was just a little bit more than \$10,000.

I think the particular example that was brought to my attention was a situation where the only asset of any significance in the estate was an automobile — so wasn't it about time that we looked at raising the limit to make sure that the summary administration procedure was available in estates up to some more realistic number? Over time my ministry has worked with the other ministries that have an interest in matters related to the administration of estates, and we put together the package of two or three provisions here in this bill that, among other things, raised that number from \$10,000 to \$25,000, which I think is a more realistic number in contemporary circumstances.

[1015]

Section 11 is also intended to clarify that the official administrator is not required to satisfy the registrar

that no relatives of the deceased are entitled and willing to administer the estate. My recollection is that that is also attempting to streamline processes in relatively modest estates.

B. Bennett: Just a follow-up, Mr. Chair, on subsection 3.1 that will be added, which the Attorney General just spoke to. I'm just wondering if I could get clarification on whether there is anything by way of an affidavit from the representative of the estate indicating that there are no relatives who are entitled to share in the estate. Is that still part of the process? Or does this do away with any requirement at all for any information on whether there are relatives out there? Does the registrar accept the affidavit of the individual bringing the estate to the registrar, or is there anything now covering that?

Hon. G. Plant: I am advised that in the circumstances this subsection refers to, we're talking about the official administrator, so we're talking about the public guardian and trustee. There is a requirement that the public guardian and trustee file some evidence or affidavit or statement about whether or not there are any relatives known to exist.

Sections 11 to 15 inclusive approved.

On section 16.

B. Bennett: It's my understanding that the changes to the Libel and Slander Act are specifically focused on protecting public libraries from vexatious lawsuits, as opposed to protecting them from housing what they may know as libellous or slanderous materials. I wonder if I could get a confirmation from the Attorney General on that.

Hon. G. Plant: There are actually two amendments here to the Libel and Slander Act. The member's question relates to the second amendment, which will be to add section 6.2 to that act. Let me just say a word or two about section 6.1, which is the first part of it, because it's part of the package. It's not related to the issue that the member spoke about.

There was a decision of the Supreme Court of Canada in a case called *Cherneskey v. Armadale Publishers Ltd.*, way back in 1979. The majority decision in that case removed the restriction on the scope of the defence of fair comment that was available to a defendant such as a newspaper editor who publishes the comment of another — for example, in the form of a letter to the editor. The upshot of the decision was that unless the defendant in the libel action was able to prove that the comment as published reflected the defendant's own, honest opinion — for example, where the newspaper editor actually agreed with the opinion expressed in the letter to the editor — the editor was denied the defence of fair comment.

For a long time this decision has been widely criticized as having imposed an undue restriction on the freedom of the media to disseminate a wide variety of

views on matters of public interest. Indeed, if you talk to most editors, I think you'll hear them say that they regard their letters-to-the-editor page as a place which is, as much as anything, a community forum for the exchange of ideas, and they want it to be that way. They want a diverse range of opinions there on the editorial pages. Shockingly enough, there are even editors who wish occasionally to publish letters from people who disagree with the policies and programs of the government, which I find an astonishing fact. Nonetheless, it's out there, apparently.

[1020]

I think, quite rightly, the media have felt that the impact of this decision of the Supreme Court of Canada is to discourage them and others from publishing comments that they may happen to disagree with.

In practical terms what we're doing here, if I may put it in these terms — I do so respectfully — is correcting what I think is the error of the Supreme Court of Canada in this 1979 decision. We are slow to do so. British Columbia is one of only three provinces that have not enacted legislation to overcome the *Chernesky* decision. The result is that the newspapers and other organs of the media in British Columbia are exposed to what I believe is a greater degree of liability — and wrongly so — than are their counterparts in most other provinces and jurisdictions.

I'm told that the Uniform Law Conference of Canada has prepared model legislation on this subject. The former British Columbia Law Reform Commission recommended this change. This is really just an example of good public policy and something that I think probably should have been done a while ago, and I'm glad that we're able to do it now.

The second amendment here, the 6.2 amendment, speaks directly to the member's question. I think the member has got it right. What we're trying to do is ensure that libraries are not on the receiving end of actions for damages in libel cases. I'm told that there is a concern out there that libraries could, from time to time, be put on the thin edge of a wedge in libel actions where someone who believes that the content of a book defamed them may choose to go after the library where the book is found, rather than going after the author or the publisher of the book.

Really, I think plaintiffs in libel cases should be encouraged to go after the actual author or the primary publisher. We shouldn't make libraries the receptors of public debate or judicial and legal debates about the contents of their books, except where it's absolutely necessary to do so.

What the amendments will do, in effect, is they will mean that if you want damages in a libel action, you're going to have to go after the author or the main publisher. You won't be able to go after the library, except for this: if there has been a determination that a book or some other written expression is defamatory, then the victim of the defamation will be able to obtain an order directing that the publication be removed from the shelves of the library. That would presumably be a form of injunction.

We think that degree of protection is necessary so that libraries don't have books on their shelves that have been found to be defamatory, but we also think libraries should be able to put books on the shelves, available for the public, and not necessarily be caught in the middle of arguments about whether or not the contents of their books are truth.

Sections 16 to 21 inclusive approved.

Title approved.

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

Motion approved.

The committee rose at 10:24 a.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

Bill 62, Attorney General Statutes Amendment Act, 2004, reported complete without amendment, read a third time and passed.

[1025]

Hon. G. Plant: I call committee stage debate on Bill 64.

Committee of the Whole House

JUSTICE MODERNIZATION STATUTES AMENDMENT ACT, 2004

The House in Committee of the Whole (Section B) on Bill 64; J. Weisbeck in the chair.

The committee met at 10:27 a.m.

Section 1 approved.

On section 2.

B. Bennett: I have a few general questions about section 2.

I find it fascinating that we're going to allow the Provincial Court to deal with claims against the Crown. I don't mean that in any sort of disrespectful or derogatory way. I think it's going to be an interesting exercise in the administration of justice, and it's going to have impact on the access to justice as well. Government has a tendency to do a lot of different things to people. One of the things that I noticed when I practised law that, I guess, discouraged taxpayers from taking on big government was simply the cost of doing so and having to go to the Supreme Court and that sort of thing.

Maybe I should get confirmation that I understand this. My understanding is that litigants will be able to

bring a claim against the provincial Crown in the small claims court. Is that...?

Hon. G. Plant: I'm sorry. I was making an inquiry of the staff who are present with me. Could the member just rephrase or restate his question?

B. Bennett: Just to get started on this section, I wondered if I could get a confirmation from the Attorney General that what this basically does is allow taxpayers to bring an action against the provincial Crown in provincial small claims court.

Hon. G. Plant: It allows litigants to bring claims against the government in small claims court.

B. Bennett: Has the ministry done any sort of assessment as to the volume of claims that might be brought under this legislation and what sorts of claims would be brought and what kind of...? Have they done an assessment that would indicate the impact on the system — how many more judges will be needed to deal with this, how many more staff in the court registries, filing staff, all that sort of thing? Is this going to bring a lot of claims against the provincial Crown, or is this expected not to be that impactful?

[1030]

Hon. G. Plant: We have done some work to try to determine what the impact of this might be on the workload of the Provincial Court. One of the things that I think we tried to do at one point was to determine how many claims against the government for amounts under \$10,000 were being prosecuted in the Supreme Court now, because you can sue the government in the Supreme Court of British Columbia for any amount. We also worked across government by canvassing all of the various ministries and asking them what they thought the impact of this change might be.

We also canvassed other jurisdictions in Canada. I'm told that six other provinces and territories have taken this step so that you can sue the governments of those provinces and territories in their provincial court, civil court. We were actually a bit surprised, when we did the comparative analysis, to find that really the impact in the other provinces has not been all that significant.

I think it's dangerous to predict exactly what will happen here with any degree of certainty, because — to build on the member's comments in second reading debate — I'm quite certain there are some people who have legitimate civil claims against government who don't bring them because the process in the Supreme Court is so expensive that it acts as an effective deterrent. We're talking about, you know, everything from a modest procurement contract for the supply of some goods where someone thinks that they're owed a bit more than they've been paid. We are talking, presumably, about minor negligence claims where there was a small injury experienced as a result of negligence perhaps by the Ministry of Transportation and Highways — those kinds of claims.

So it's hard to know how many of them may be out there and not actually acted on. But we think that we can implement this within the current complement of judicial officers and court staff and court facilities. We think that there is room to absorb whatever the increase in workload is that will flow from this. Certainly, that's our intention.

B. Bennett: I wonder if I could get the Attorney General to speak a little bit about the other side of this, which is the defence of claims made in Provincial Court against a provincial Crown. How will these claims be defended? Will the Crown prosecution office be involved in this? Will the Crown be represented by a lawyer in most cases? Have we factored in the cost of defending these claims? Could the Attorney General just speak to some of those points?

Hon. G. Plant: Well, it won't be prosecutors, because we're talking about civil claims, but it will depend on the circumstances. It could be a staff person from a ministry, because as the member knows, small claims cases are often processed by the litigants themselves. It may be a staff lawyer from the legal services branch in some cases, or we may from time to time have to appoint ad hoc counsel. In designing these amendments and in trying to develop an analysis of their impact, we've worked pretty extensively with the legal services branch in my ministry, and they're comfortable that we're going to be able to implement this in a way that won't create a huge new burden for the legal services branch, which routinely represents government in the courts.

Sections 2 and 3 approved.

On section 3.1.

[1035]

Hon. G. Plant: I move the amendment to section 3.1, which is in the hands of the Clerk. It adds the following section after the heading "Court Rules Act." It actually adds the section that will become section 3.1. That new section reads as follows:

[SECTION 3.1, by adding the following section after the heading "Court Rules Act":

3.1 Section 1 of the Court Rules Act, R.S.B.C. 1996, c. 80, is amended by adding the following subsection:

(9) In addition, in relation to the Provincial Court, the rules may provide for different practice and procedure for the purposes of a pilot project referred to in section 21 (3) of the Small Claims Act.]

On the amendment.

Hon. G. Plant: I would be pleased to speak to that amendment.

The purpose of this amendment is to allow for different rules of practice and procedure for the purposes of a pilot project under the Small Claims Act in Provincial Court. This is required because of the \$10,000 limit that's referred to in the Small Claims Act and rules. A new rule would need to provide that, where the

\$10,000 limit were referred to for the purposes of registries with a higher limit, it ought to be read to refer to the higher limit.

Well, Mr. Chair, that's what I was told to say, so I said it, because I always do what I'm told to. But let me explain what I think this is really about. As we have worked on the initiative to raise the monetary jurisdiction of the small claims court, we have from the outset tried to do this in a way that achieves the objective of enhancing access to justice by expanding the jurisdiction of the court and does so in a way that ensures that the access that is already there in terms of how long it takes to get a case through that system is not unduly compromised by adding a tremendous amount to the workload in a way that the court can't cope with. We've also been pretty clear that we need to find a way to do this, if at all possible, without increasing public expenditure for the court.

We have worked very hard with the Provincial Court over, I think, a couple of years now to test-drive certain ideas about how this would roll out across the province at different monetary limits and with different procedures, perhaps. We've certainly looked at that as an idea. That work continues.

As I said yesterday in second reading debate, this amendment is an enabling amendment. It is intended to permit the work that has been done to continue to be done so that we can come up with the best possible model for an expanded civil jurisdiction in a Provincial Court that meets the objectives that I've described.

In order to allow that work to continue in the best possible way, we started talking a week or so ago about whether or not we might be better positioned to see if we could do something by way of a pilot project in a particular court registry to test-drive a particular idea or initiative. Pilot projects are a good way of implementing public policy reforms.

We asked the question: does the current framework in the act permit this? Would the amendments that we proposed permit pilot projects? The answer that came back was that they didn't think it would. So these amendments are really just intended to allow us to design a pilot project, if it's determined that that's the best way to go, and to roll it out without worrying about whether or not we have the legislative capacity to do so.

Section 3.1 approved.

On section 4.

Hon. G. Plant: I move the amendment to the introductory words of section 4 of the bill.

[SECTION 4, by deleting "of the Court Rules Act, R.S.B.C. 1996, c. 80,"]

On the amendment.

Hon. G. Plant: The purpose of that is that we don't need to repeat those words, because we've just introduced them by the amendment that we just made a minute ago.

Amendment approved.

Section 4 as amended approved.

Section 5 approved.

[1040]

On section 6.

B. Bennett: With respect to the increase in the amount that claimants can make claim for in small claims court, the new regulation or the power to make regulations will allow the Lieutenant-Governor-in-Council to increase the amount from its current \$10,000 up to \$50,000. I think there will be a great deal of interest in that, particularly in the small business sector with the trades and so forth. I just wonder if the Attorney General could give us some estimate as to the time lines for the increase that is clearly envisioned by this amendment.

Hon. G. Plant: I appreciate the member's question, and let me say this. I think there's been some very important work that's been done by the judiciary, by the legal profession and by the people in my ministry to try to move this initiative forward. One of the reasons why I wanted to bring this legislation into the House now was that I wanted to send a very strong message that this is important work, that the Legislature of British Columbia believes this work needs to be done. I'm hoping that message will be heard with some degree of urgency on the part of the technical experts, if you will, as a strong signal that we need to get on with this.

In answer to the member's question — "What's the timetable?" — I was tempted to say something like: actually, I would like this to be done yesterday. It should have been done yesterday. When I take this issue out into the larger public — that is, the public of British Columbia who are served by our courts, and that includes the small business community that the member referred to — I hear an overwhelming voice of support for this change. What I hear is people say: "It is past time to get on with this."

I hear people tell stories about the cases they feel they cannot bring because the system effectively precludes access by the current structure and the current limits on jurisdiction. I mean, I know anecdotally that you can hear from members of the judiciary that litigants routinely bring claims into the small claims court, for example, where the value is \$40,000 or \$50,000, and they're forced to give up that claim in order to get into a court where the process is affordable.

If you start talking about what it takes to make a case a viable proposition in the Supreme Court of British Columbia, the numbers get very high. It probably depends whether you ask trial counsel in Cranbrook or Prince George or downtown Vancouver. I don't have any hesitation in informing the House that recently, I had a discussion with a very experienced civil litigation lawyer in downtown Vancouver — obviously, someone who tends

to work on pretty complex cases — who said that he, from time to time, advises his clients that even a million-dollar lawsuit, if it's a complex commercial case, is no longer an economically viable proposition.

We've got a problem we have to fix. We have a great court system. We have excellent judges. We have a bar that is filled with the best lawyers in Canada. But increasingly, what they do is disconnected from the reality of the experience of British Columbians. In fact, I would argue that for a whole lot of people, the Supreme Court of British Columbia as a place to resolve civil disputes, particularly as a place to resolve private civil disputes, is virtually irrelevant. It's still a place where you may go and have the odd insurance fight, and it's sure a place where people go when they want to raise public law issues, particularly where there are issues about governments or constitutional questions. But as a place where the ordinary British Columbian gets to go and actually have a case decided in a timely way and in an affordable way, it's not very relevant.

[1045]

I don't have a specific answer to the question: how long will this take? I believe it is important work. I believe it needs to be done urgently, and I certainly hope and encourage all of those who are seized with the task of making this real.... I give them every encouragement I possibly can to do that work as quickly and, obviously, as effectively as possible.

B. Bennett: I appreciate the Attorney General's comments. I think that sometimes in our sincere quest to improve the investment climate here in this province and to get our economy moving again — we've obviously been successful in doing that — we forget that in terms of investment around the world trying to locate jurisdictions where their investment is not only secure and stands to pay off, they also look for jurisdictions that are good to do business in. Part of the evaluation of whether a place is good to do business in or not is how the court system works, particularly on the civil side. So the Attorney General's comments about the relevance of the civil system today, as a place to resolve commercial disputes, I think has a broader significance than maybe what we realize.

I did want to ask specifically. There are a number of sections — 7, 10, 11, 14 and 15 — in the Small Claims Act, all dealing with the appeal process, that are being taken out of the act. I am just wondering.... I see that the right of appeal remains. What does this actually do to the process for bringing an appeal of a small claims judgment?

The Chair: Member, we'll deal with section 6 first, then section 7.

Section 6 approved.

On section 7.

Hon. G. Plant: Generally speaking, the procedure around court processes is dealt with in the rules. It's better dealt with in the rules than it is in the act, be-

cause if it's dealt with in the rules, it's more amenable to being fine-tuned from time to time. So we're not intending to take something away here substantively; we're just intending to move these issues that are procedural issues into a rule-making process.

Section 7 approved.

On section 8.

Hon. G. Plant: I move the amendment to section 8 standing in my name in the hands of the Clerk, which amends the proposed section 21 by adding the following subsection:

[SECTION 8, in the proposed section 21 by adding the following subsection:

(3) For the purposes of a pilot project, a regulation under subsection (2) may prescribe another amount that, for a prescribed period of time, applies in respect of a prescribed registry of the Provincial Court.]

On the amendment.

Hon. G. Plant: The purpose of this amendment has really been explained in my discussion about the earlier amendment and the possibility that these reforms may first take shape and be given effect in the form of pilot projects test-driven at particular registries where we are trying to test out different amounts.

Amendment approved.

Section 8 as amended approved.

Section 9 approved.

Title approved.

Hon. G. Plant: I move that the committee rise and report the bill complete with amendments.

Motion approved.

The committee rose at 10:49 a.m.

[1050]

The House resumed; Mr. Speaker in the chair.

Reporting of Bills

Bill 64, Justice Modernization Statutes Amendment Act, 2004, reported complete with amendments.

Third Reading of Bills

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

Hon. G. Plant: By leave, now.

Leave granted.

Bill 64, Justice Modernization Statutes Amendment Act, 2004, read a third time and passed.

Hon. G. Plant: I seek leave to make an introduction.

Leave granted.

Introductions by Members

Hon. G. Plant: I see that we are joined in the gallery by Mark Benton, who is the executive director of the Legal Services Society of British Columbia. I just want to say it's a pleasure to see Mr. Benton here. He is a passionate advocate for access to justice for the economically disadvantaged in British Columbia, and he brings along with that passion great creativity in the search for solutions for how to make a difference in people's lives. He also actually knows how to balance a budget. When you bring those three things together, you've got a heck of a great public servant. It's a delight to see him here in the gallery. I hope all members will make him welcome.

I call second reading of Bill 67.

Second Reading of Bills

EXPROPRIATION AMENDMENT ACT, 2004

Hon. G. Plant: I move that the bill be now read a second time.

Bill 67 amends the Expropriation Act to provide the Supreme Court of British Columbia with jurisdiction over expropriation, compensation and other expropriation matters that are currently held by the Expropriation Compensation Board.

The Expropriation Act provides for the independent adjudication of expropriation compensation to ensure that when private land is taken for a public purpose, the landowner receives fair compensation. Since 1988 the Expropriation Compensation Board has had this responsibility. However, the benefits of having this function provided by an administrative tribunal have never been fully realized. One of the reasons why administrative tribunals can serve as effective tools for the implementation of public policy is that administrative tribunals can be places where justice is administered quite informally. Unfortunately, proceedings before the Expropriation Compensation Board have been formal. They are often protracted, and the decisions of the board are frequently appealed.

In some respects, I would say this is not so much the fault of any individual who has ever served as a board member, because we've had some very good board members over the years. It's more in the nature of the issues, I think. When we take somebody's land from them for a public purpose, oftentimes we are talking about issues that are of great value to the citizens, and the process of determining value is complex. It involves expert evidence. Really, it involves the kinds of things and the kinds of work that are done as effectively in courts.

Bill 67 enables the Expropriation Compensation Board to be dissolved and its jurisdiction transferred to

the Supreme Court of British Columbia. This will reduce the duplication that exists now in respect of the prospect of appeals that so often becomes a reality, and it should reduce the delay. It should result in streamlined proceedings to determine these issues. I believe that parties to these cases will also benefit from the mediation option, which is available within court processes.

I do want to make the point — and I've made it before, but I want to make it again here today — that the principle of this bill is solely to transfer the board's jurisdiction and to make the necessary consequential amendments and to do so as seamlessly as possible. The board currently has a low caseload. No other aspect of current expropriation law is affected by Bill 67. In other words, the substantive law of expropriation is not affected by this bill. The question of when you're entitled to claim compensation for expropriation is not affected by this bill, nor is the power to expropriate as it may reside in other places affected by this bill.

[1055]

This bill is really about process. In fact, in simple terms, it's about where you go to argue about an expropriation compensation issue. To achieve that transfer of jurisdiction, Bill 67 contains a number of key amendments. First, in a number of places, the bill simply replaces the word "board" with the word "court" to effect the transfer of jurisdiction that is currently held by the board.

There are other amendments that provide the Attorney General with power to appoint an inquiry officer to carry out inquiries requested by a landowner who objects to an expropriation. As with the current act, the right to request an inquiry is restricted to expropriations that are not linear. In other words, this right does not apply to linear expropriations such as pipelines, water mains and highways, and Bill 67 does not change this.

There are transition provisions to ensure that any hearings that have been set or matters which are currently being decided by the Expropriation Compensation Board will continue to be heard and decided by that board.

I should say, in respect of the inquiry officer point that I made a moment ago, we made some inquiries to determine how often that procedure — which is currently available to the board — is being used, and the answer is not very often. We've decided to preserve the procedure, but we don't think that it's going to be a very demanding activity.

Finally, Bill 67 makes a number of consequential amendments to other statutes to replace the board's jurisdiction with the jurisdiction of the courts. These amendments will provide British Columbia with the most appropriate, effective and efficient framework for the independent adjudication of expropriation compensation.

Motion approved.

Hon. G. Plant: I move that the bill be referred to a Committee of the Whole House for consideration at the next sitting of the House after today.

Bill 67, Expropriation Amendment Act, 2004, read a second time and referred to a Committee of the Whole House for consideration at the next sitting of the House after today.

Hon. G. Plant: I call committee stage on Bill 57.

Committee of the Whole House

RANGE ACT

The House in Committee of the Whole (Section B) on Bill 57; J. Weisbeck in the chair.

The committee met at 10:59 a.m.

Sections 1 to 9 inclusive approved.

On section 10.

[1100]

J. Wilson: Section 10 sets out the criteria for applications and how they're responded to. Section 10(1)(e) says: "rights over all or part of the Crown range that are the subject of the invitation and that are shared by an applicant with one or more other persons." Could the minister clarify for me the wording "one or more other persons"? Are these one or more other persons range tenure holders? Or can they be other persons with other interests out there on the land base, such as forest operations, guide-outfitters, trappers — this type of tenure?

Hon. R. Harris: That's exactly what it's allowed to do. This doesn't change what's been allowed on the land in the past. The purpose of putting this section in the bill was that this was seen as a better place to do it, but in fact it allows for exactly those other user groups that you made reference to, to have access. That is consistent with what's happening today.

J. Wilson: Okay. I want to throw a hypothetical situation out to the minister, and perhaps he will get a better idea of whether this will actually work for range users. Suppose a rancher needed a piece of spring range. There is an invitation out there, an application put out to acquire the spring range, because it's pretty critical in any operation. We also have a guide-outfitter who has a tenure over that. Most likely in a lot of cases, he would say: "Hold on here. I need that spring range, because that's the area where I go and hunt bears in the spring, and I don't want a bunch of cows running around there while we're bear-hunting." It doesn't matter whether the bears and the cows are compatible or not; it is the fact that it becomes more of a turf war or a territorial thing.

If he puts up a good enough argument to the district manager, would he be able to stop that rancher from acquiring that spring range, which could be critical to his operation? It wouldn't affect the bears one way or another. Cows don't mind bears, and bears

don't mind cows, but some people seem to think they do.

Hon. R. Harris: The purpose of the Range Act was in fact to give those district managers more flexibility. In the case of your example, when you talk about making compelling arguments for multiple uses of range, those compelling arguments could be made. Those are the decisions.... By modernizing this act, we've now empowered, at the district level, someone to look at all of those arguments from a variety of folks who may have interests in a certain piece of property — as well as look at some of the other values that may be impacted — and make a decision. I think that's a better place to put it. That's one of the issues that has come up historically — that these decisions have not taken in that local consideration.

[1105]

This section does allow for those compelling arguments. At the end of the day, the district manager will be in a position now to make a decision that I think will work better locally, quite frankly.

Section 10 approved.

On section 11.

J. Wilson: Section 11 is to deal with the disposition of the application. When I read this, a question came to mind: is there any turnaround time established by the ministry to get these things out the door?

I'm thinking, from personal knowledge, that applications today.... If someone were to maybe put in an application for a new piece of range or whatever, there's a very good chance they would be told: "Don't expect anything for three years." This has happened on several occasions that I can think of. Do we have any windows established to get this paperwork done, get the studies done and get the decisions made in a time frame that is going to be of some value to the applicant?

Hon. R. Harris: This bill won't in fact put in place any firm disciplines in terms of the turnaround time for processing range applications. The member is absolutely right when he talks about a frustration that has been experienced around the province.

There are a number of legitimate reasons for why we do incur those kinds of time delays. Certainly, there is a need for us.... In his last question, he talked about compelling arguments by other groups that may have some interest or ideas around a range application. Certainly, our first nations consultations are a critical part of the application process.

We are embarking right now, over the next six months to a year, on putting in place some very firm business models for how we can start to facilitate — or really put some walls around — this process so that we do bring some timeliness to it. We are certainly aware, as the member has brought up, of the need for those folks needing to get out on the range to get some an-

swers around that rather quickly. It is an area that we are spending a fair bit of time on — how we're going to do that. It's certainly the next step in terms of this legislation.

Sections 11 to 15 inclusive approved.

On section 16.

[1110]

J. Wilson: Section 16(1)(c)(i). If the district manager were to, say, approve a land application on a specific area which could have a major impact on the tenure holder there, such as a land deletion.... We'll say it's a good piece of land that's probably best used for agriculture. Maybe it's got a good classification and someone needs it. If that's taken out — and the way I read this, it could be taken out without consultation — is the ministry then going to look at compensation? Or would their first priority be to find replacement for the loss there?

Even though it may be a small area in the total picture, ranges are generally made up of smaller areas that are highly productive with a lot of land in between that is either poor to non-productive or moderate. You can really damage a range unit by deleting small portions within that. I'm wondering whether or not, when we get to compensation — which isn't this section.... When I read this, I thought: is there going to be compensation, or is the intent to find replacement, if there is that loss, on an equivalent basis?

Hon. R. Harris: First of all, the intent of this section is not about taking away something that already belongs to an existing lessee. This section really puts in place our ability to direct-award to an existing Land Act holder, or leaseholder, a portion of land that's maybe just for an overnight for horses or something else. It's not a case that we're going to be taking existing leases away from one holder to give them to somebody else. That's not the intent of it, and we certainly wouldn't be involved in that without those kinds of consultations anyway, in any event. That's not the intent of that section.

Sections 16 to 22 inclusive approved.

On section 23.

[1115]

J. Wilson: Section 23(2)(b)(ii). The district manager may take action if the holder of the licence "has not provided security or a deposit required under this Act."

Could the minister elaborate on that? In all of the years I've been involved with the industry and range use, I have never run into a situation where a deposit was ever required.

Hon. R. Harris: I want to be very clear here. It is not our intent in this section to be out asking people for

deposits. That's not the intent at all, and we're not going to be doing that.

The intent of this section is to sort of align this act with what is already in the Forest and Range Practices Act and the Forest Act and to put in place that enabling tool so that if something were to occur on the land base.... Maybe we have a licensee or lessee that hasn't lived up to their obligations or has not been managing the range appropriately. We may want to be able to look at it at that time. It's just to put in place those enabling tools. It is absolutely not our intent to require a deposit at this time, and it's not what we're going to be doing. It is, in fact, to put in place that enabling ability.

J. Wilson: That's a real relief to know, and I'm sure a lot of other people would be relieved at that, because as you read it, it isn't an enabling tool.

Has the ministry worked out anything around this enabling tool to determine how long they're going to hold that deposit, how it's going to be treated?

This is not like dealing with a timber sale, where you harvest the wood, you do your silviculture obligations, and then you walk away from it — you're finished. This rancher may start operating when he's 25 years old. When he reaches 75, he could still be operating. At what point does he get his money back? How long would they even consider holding it — a lifetime? I'm not sure, because it's a whole different situation than what you encounter when you're working under the Forest Act and working with timber.

Hon. R. Harris: This section does not require us to collect deposits. I think that's very important. It doesn't require us. All it does in terms of enabling is put in place the tools, or it allows us to if we were to go there. It does not require a deposit. Quite frankly, if we did, a deposit would be treated the same as it is in any other area of government in terms of how we would manage money.

Sections 23 to 25 inclusive approved.

On section 26.

J. Wilson: Section 26(2) says: "(2) If a grazing permit has been replaced once under this section, no more than 2 further replacement grazing permits for the area described in it may be entered into with its holder or with the successors or assigns of the holder."

[1120]

Does that mean that if you are the holder of a grazing permit today — which could run out anywhere from today up to the next five years — once that runs out, you will only get two more shots at this, and then you will not have that range for the use that you need it for? I've read this entire bill through, and I don't see anything in it where it allows for transition from a grazing permit to a grazing licence. A grazing licence has somewhat more security. It's a tenure agreement, and it does have a little more security than a permit. When I read this, I'm rather concerned, because as I

say, I have not seen anywhere where it allows for a transition over to a licence.

Hon. R. Harris: What this section of the act does put in place, limiting the number of times that people can reapply for permits.... Our goal has always been and continues to be to move people into long-term licences and to provide the kind of support that helps those people apply for them and use the district offices. I do think that that is the most desirable thing not just for us but, in fact, for the tenure holders.

This section does put some limits on it. The intent, though, over the course of those permitted times is that those people who would like to apply for long-term leases would use that opportunity to start that process.

J. Wilson: Thank you to the minister. I appreciate that we are moving that way. It's what people want. I'm not sure how far down that road we've travelled yet. If you hold a permit, is the opportunity there today to go in and apply for a licence? Say you're in year 2 of the permit — or in year 1 or year 3. Is it possible to convert that into a tenure licence and cancel the remaining portion of that permit to get this process started and underway?

[1125]

You know, if you wait until the permit is up, then you have to reapply, and understanding the work that goes around all of this.... It takes a lot of time. It may take months; it may take a year or two to get there. Is that option available to permit holders if they wish to convert at any point in their permit, like to a licence? Can they do that and then have the licence kick in and cancel the rest of the permit that's there?

Hon. R. Harris: What we will be doing through the regulation is putting in that provision that allows the surrendering of a permit, but there is no provision here that allows for the automatic rollover. I do understand and appreciate the fact that tenure holders want to acquire that long-term lease, but that still goes through the vacancy process and opportunity and becomes a competitive bid system.

My sense is that those people who have been operating on a permitted area through three permits will certainly have a lot more information and, in fact, the material needed to be successful in that process. So within the regulation, we're going to provide some provisions that allow for that surrender. But as we move still in terms of providing that new opportunity on a licence, it will be done in a competitive framework.

Sections 26 to 33 inclusive approved.

On section 34.

B. Lekstrom: My question to the minister relates to section 34, "Other uses of Crown range." Upon reading this section, "A licence or permit under this Act does not prevent the government from (a) using the Crown range, or (b) granting to others the use of the Crown

range," I'm asking the minister: can you explain "other uses" to me? Are we talking drilling rights? Are we talking issues on the land base? I'm just not sure when I read this section. Carrying on, it talks about "compatible with grazing or hay production."

Hon. R. Harris: In fact, it's exactly what the member just talked about. The purpose of the licence is not to provide that exclusive use but to provide access to a number of others. It could be gas and oil, mining, forestry interests. It could be a number of other interests, but certainly in that discussion — and we talked about it earlier — the compatibility of that is really important. In those discussions at the district level, certainly anyone that is looking at moving onto a licensed area would have to make that compelling argument to show that those interests can work together.

It is not about providing exclusive use. This is about providing that sort of multiple use of the land that works in harmony with each other. That's the intent of this, and that's exactly how it is.

B. Lekstrom: Looking at this, reading section 34 of this act and hearing your answer, I understand the issue is that the district manager has the ability to make that decision if the use is compatible. I mean, we could talk about recreational uses and so on.

Following through on my first question would be: a compatible use, whether it be oil and gas and how that evaluation is done by the district manager.... If a decision is made for alternate use on this Crown range that would affect the rancher substantially, is there compensation through this alternate use agreement then?

[1130]

I have a concern. Money is one way. The land issue for our ranchers is far more important than revenue or compensation. So my concern would be that if we have an agreement or the district manager agrees to an alternate use on a piece of Crown range that's already tenured out, how do we deal with that conflict?

Hon. R. Harris: First of all, the intent of the whole act in terms of modernizing it is to bring, I think, more cooperation to the process. We talk about empowering district managers. Obviously, the intent here is not to move into that world where we're creating conflict but in fact to move away from that.

This provision actually exists today. There's no real change. It's in the act, but it's actually what's in place on the ground today. I do actually believe that we're going to see over time that this will work a lot better from a local perspective. But that being said, obviously at times there is conflict. At times things just don't get along, and those same remedies that existed before in terms of someone who believes they're impacted and how they deal with government are still there today. But the act itself doesn't deal specifically in terms of a compensation component.

B. Lekstrom: I thank the minister for his answers. Following through on section 34.... Upon a disagree-

ment between, we'll say, the district manager and the permit holder on use of the land under this.... If they can't reach agreement on that alternate or secondary use on the land, would it then advance to section 41 under the Commercial Arbitration Act to reach a settlement on that?

[1135]

Hon. R. Harris: That section does not apply in terms of the example that we just talked about. It applies when we, under this act, significantly change or cancel a licence. At that point, we would start to look at that compensation. That process kicks in at that particular time, but not in terms of.... The first section deals with compatible interests. This section deals with where, under this act, we may substantially change or cancel an existing licence.

B. Lekstrom: Just following up, then, with one final question. I think I heard from the minister that other uses of Crown range.... Then, if it is allowed by the district manager, there would be no compensation payable to the tenure holder if it affects his Crown range?

Hon. R. Harris: Maybe I should just clear up my answer. Any time someone engages in a tenure with government where they think that they've been impacted, they always have that opportunity to come back, but not under this act. If any tenure holder can show that a decision government has made has impacted their tenure or their licence, they always have the opportunity to come back to government and seek compensation. That right exists, but this act doesn't specifically speak to that aspect.

Sections 34 to 48 inclusive approved.

On section 49.

B. Lekstrom: One final question under section 49. Directed non-use of Crown range. Does compensation affect this section?

Hon. R. Harris: The short answer for this is no, but I do want to qualify it. This section, what it was put in to do, is where there are situations that occur that are not anyone's fault. So you have a drought, and there is pressure on the range where it just isn't the right time to use it, for whatever reason. This section allows us to act at that point. There is really no fault involved here on anyone's part. It just allows us to take some actions on a range area to deal with other values or other situations that have developed. It allows us to act on it. So in that scenario, compensation is not available.

B. Lekstrom: That's the way I understood it, but it surprised me that the words "extenuating circumstances" or "due to weather" weren't included in this, because upon reading it, I would expect that a directed non-use of Crown tenure, without laying out the rea-

sons for that directed non-use, could create significant challenges for both the tenure holder and government.

[1140]

Hon. R. Harris: That's a fair comment, but I do believe you are going to find that district managers are going to be reasonable in terms of how this is applied. The purpose of this act, in terms of modernizing it, isn't to limit access to range. Actually, what we're trying to do here is provide greater access and, I think, decisions for the cattlemen and the rest of the users of range — some security that in fact this will work better for them. I do think you'll find that district managers will use some pretty good discretion on this. This is a section strictly to help us deal with those very specific circumstances.

I appreciate the member's comments that maybe it would create greater clarity to put in what that is, but I do believe we have some pretty talented people in all those offices who will do a good job in terms of making sure that we have good balance in the system.

Sections 49 to 85 inclusive approved.

Title approved.

Hon. R. Harris: Mr. Chair, I move the committee rise and report the bill complete without amendment.

Motion approved.

The committee rose at 11:41 a.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

Bill 57, Range Act, reported complete without amendment, read a third time and passed.

Hon. G. Plant: I call committee stage debate of Bill 65.

Committee of the Whole House

FORESTS STATUTES AMENDMENT ACT (No. 2), 2004

The House in Committee of the Whole (Section B) on Bill 65; J. Weisbeck in the chair.

The committee met at 11:44 a.m.

On section 1.

J. MacPhail: This legislation is to deal with the mountain pine beetle epidemic, so my first question to the minister is: what areas will be the priority for the salvage licence?

Hon. R. Harris: The areas this will be applied to at the moment will be the Quesnel, Prince George and Lakes TSA. That's the area that presently has been most

severely impacted by the pine beetle infestation, and it's certainly an area we've been concentrating on in our expressions of interest.

[1145]

J. MacPhail: What would be the nature of the attack? As I understand it from my travels, there is a green attack, which means the trees that are infected but not yet dead. It is called a green attack. The brown attack is the trees that have recently died that would be logged. Then there is the grey attack, which goes after the trees that have actually dropped their needles. What will be the basis upon which licences will be awarded?

Hon. R. Harris: Quite frankly, all of the ones that you've mentioned are part of this. The fact is that in the case of the pine beetle infestation, once a tree is attacked, it's going to die. It's not a question of that. The major focus at this point is going to be the grey and red attack. The grey and red are the areas of the fibre basket that, quite frankly, over the next ten years will be completely valueless if we don't look at dealing with it today. So our focus is going to be on grey and red areas, but there is no doubt that in capturing some of those cutblocks, it's going to include some green attack also.

J. MacPhail: Am I mislabelling it as a brown attack? Is that what the minister means by a red attack?

Hon. R. Harris: That's correct.

J. MacPhail: What is the stumpage rate for the beetle-kill timber?

Hon. R. Harris: The pricing will be exactly the same as it is today under the comparable-value pricing system, and that's the model that will be put in place.

J. MacPhail: How much money from the stumpage collected does the minister anticipate will be made available for silviculture?

Hon. R. Harris: Any of the new tenures we put out are going to have the same rights as well as responsibilities of existing tenure holders. Part of that obligation today is reforestation. That's a critical piece of these new tenures. In fact, what we're trying to do here is get this reforestation on the go sooner rather than later. The longer we delay this process, the more we magnify the problem. So these new tenures will have exactly the same rights and obligations that existing tenure holders have.

J. MacPhail: But as I understand it, the large forest companies have the ability to implement their own silviculture. Will it be up to the salvage operators to do their own silviculture?

Hon. R. Harris: This section deals with forest licences. This isn't the salvage. Just for clarity for the

member, the forest licences that we will put out here are going to have a range of sizes, and the most recent ones we announced were about 25,000 cubic metres and 50 cubic metres, but they will be a lot larger.

In terms of salvage, I think this is not a program that is focused on salvage operations. That's a little bit different than what the section deals with.

J. MacPhail: Well, perhaps the minister could refer me to that, then, in this bill. Is the minister suggesting that this bill is only going to be giving forest licences to the large companies, that there will be no salvage operations?

Hon. R. Harris: Maybe I should create a little clarity in terms of the difference between this program and salvage. We've put in place a new small-scale salvage program that deals specifically, I think, with the folks that she is talking about. This particular program isn't exclusive to large licensees, but the target of it is long-term licences. There are other people that harvest in the forest other than large licensees and other than salvagers, whether they're log home builders, small milling independents. This program is aimed at all of those. It is also aimed at bringing some new entrants into it other than just major licensees. That's the focus of this particular part.

The small-scale salvage program that we put in place — I think it's what the member is referring to — is covered in other sections of the bill where we've made some other changes but not specific to this piece.

J. MacPhail: Perhaps the minister could direct me, then. When would it be appropriate for me to ask my question about salvage operators and subsequent reforestation through silviculture?

[1150]

Hon. R. Harris: That would be sections 10 and 19, which deal specifically with the silviculture around small-scale salvage.

Sections 1 to 8 inclusive approved.

On section 9.

J. MacPhail: Section 9 of this legislation deals with "Small scale salvage costs portion to be paid into special account." Perhaps the minister could suggest to me how that will operate.

Hon. R. Harris: Section 9 deals with stumpage rates. Section 10, I think, deals with the issue that the member is bringing up.

J. MacPhail: I took the minister's direction; I'll ask my previous question again under section 10. I've asked a new question under section 9. How will that account operate?

The title of the section is....

Interjection.

J. MacPhail: Section 9. "The following section is added: Small scale salvage costs portion to be paid into special account."

Hon. R. Harris: The revenue that will collect from that will go into the forest stand management fund. That fund will be accessible by the district manager to do the silviculture prescriptions that are required on the areas that are salvaged in his particular district.

J. MacPhail: Okay. I'm back to my.... I guess section 9 is the one on which we talk about silviculture. I have another question before I do that, though.

I'm sure the minister is aware of Dave Neads. Dave Neads sits on the minister's community advisory group. He's also a member of the Cariboo-Chilcotin Conservation Society. He had this to say about dealing with the beetle epidemic last fall:

"The beetle epidemic will pass. What will the legacy of uplifted annual allowable cuts be? In effect, we are cutting tomorrow's trees today. How do we pass this benefit along to our children to address longer-term sustainability? Perhaps a trust fund where the annual allowable cut uplift stumpage is placed for the development of other economic streams in the interior. This would be analogous to the fund Alberta designed to stabilize the ups and downs of oil revenues in that province."

The point that Mr. Neads is making is that as we increase the annual allowable cut to deal with the mountain pine beetle kill, we are actually cutting down trees that would be available for jobs in the future. We're moving that work up to now. His point is asking: what are the minister's plans to deal with the lack of that economic opportunity in the future?

[1155]

Hon. R. Harris: Let me start this way. First of all, we're not cutting down trees today that will be there for us tomorrow, ten and 15 years from now. We need to understand that very clearly. The havoc the pine beetle infestation is wreaking through the interior is that that value and timber is going to be lost to us forever. It is, in fact, a fibre basket that, if we don't do something with it today, won't be there in ten or 15 years. Not only that, if we do nothing and don't harvest any increase, don't uplift in any manner, we're still going to have that fibre lost, and we're still going to see a negative impact on the AAC right through the interior.

I think the member's point is pretty well taken. Quite frankly, I think that we need to take a good look at how we're going to deal with uplifts, how we're going to deal with the revenue from those uplifts and how they can be used for us in the future.

Dave Neads does sit on the advisory panel I put together, and we met just within the last month. That was a topic of discussion that we had at that table. I think that today Dave would say it was a pretty good discussion. We also talked about the uplift and how

we're going to approach it. That group has been incredibly helpful to me in terms of putting together a plan on how we move forward, how we actually deal with up-lifts, how we do it in a thoughtful way, how we interact with LRMP processes so that we are in fact respecting the other values in the forest we're trying to protect.

All of those discussions are things we are looking at today. We haven't discounted any of them. We've very clearly said to the mayors in the communities across the board that we do think we need to take a serious look at how we look at the future. We've put in place, specifically, an individual in the province — a community sustainability director — who's spending time talking to all of the communities about how we bring all the resources of the province to their communities over the next ten to 15 years.

I do think that we are thinking long term. This is probably the first plan that does start to think long term in terms of how we manage infestations. I do think that all of the things the member just spoke about are in fact things we are talking about.

Noting the time, I'd like to suggest at this point that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 11:57 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. G. Plant moved adjournment of the House.

Motion approved.

Mr. Speaker: The House is adjourned until 2 o'clock this afternoon.

The House adjourned at 11:58 a.m.