



5th Session, 37th Parliament

OFFICIAL REPORT OF  
DEBATES OF THE  
LEGISLATIVE ASSEMBLY  
(HANSARD)

**Tuesday, October 19, 2004**  
**Morning Sitting**  
**Volume 26, Number 10**

THE HONOURABLE CLAUDE RICHMOND, SPEAKER

ISSN 0709-1281

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

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**5TH SESSION, 37TH PARLIAMENT**

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Morning Sitting

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TUESDAY, OCTOBER 19, 2004

The House met at 10:04 a.m.

Prayers.

[1005]

### Orders of the Day

**Hon. S. Hagen:** I call committee stage on Bill 60.

#### Committee of the Whole House

UNIVERSITY AMENDMENT ACT, 2004

The House in Committee of the Whole (Section B) on Bill 60; J. Weisbeck in the chair.

The committee met at 10:07 a.m.

Sections 1 to 6 inclusive approved.

On section 7.

**Hon. T. Christensen:** I move the amendment to section 7 standing in my name in the orders of the day.

[SECTION 7, in the proposed section 35.1 (2) by deleting paragraphs (i) and (j) and substituting the following:

- (i) 4 persons who are not faculty members, elected by and from the convocation;
- (j) one member to be elected by the governing body of each affiliated college of the university;
- (k) additional members, determined by the senate, without altering the ratio set out in paragraphs (g) and (h).]

Amendment approved.

Section 7 as amended approved.

Sections 8 to 13 inclusive approved.

Title approved.

**Hon. T. Christensen:** I move that the committee rise and report the bill complete with amendment.

Motion approved.

The committee rose at 10:08 a.m.

The House resumed; Mr. Speaker in the chair.

### Reporting of Bills

Bill 60, University Amendment Act, 2004, reported complete with amendment.

### Third Reading of Bills

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

**Hon. T. Christensen:** By leave, now, Mr. Speaker.

Leave granted.

Bill 60, University Amendment Act, 2004, read a third time and passed.

**Hon. I. Chong:** I call committee stage of Bill 68.

#### Committee of the Whole House

LAND TITLE AND SURVEY AUTHORITY ACT

The House in Committee of the Whole (Section B) on Bill 68; J. Weisbeck in the chair.

The committee met at 10:10 a.m.

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

Motion approved.

The committee rose at 10:11 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. I. Chong:** I call committee stage on Bill 73.

#### Committee of the Whole House

FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY  
AMENDMENT ACT, 2004

The House in Committee of the Whole (Section B) on Bill 73; J. Weisbeck in the chair.

The committee met at 10:13 a.m.

Sections 1 to 22 inclusive approved.

On section 23.

**J. MacPhail:** This is the Freedom of Information and Protection of Privacy Amendment Act, 2004. This is a piece of legislation that is this Liberal government's answer to their actions of outsourcing the management of information to companies that are not part of the public service, the public sector, and indeed may be located in other countries as well.

Alarm was raised in the spring about the government's outsourcing of health information, particularly the Ministry of Health outsourcing the management and administration of personal health information. Alarm was raised by others outside of this government about whether anti-terrorism legislation in the United States, particularly the Patriot Act, would override the rights of British Columbians.

The government first resisted any discussion that there may be a problem here and, of course, later had to admit that there was a problem that needed atten-

tion. This bill is this government's answer to that very serious concern around protection of privacy rights, sovereign rights of British Columbians — Canadians — over American anti-terrorism legislation.

[1015]

You may also recall, Mr. Chair, specific to this particular section, that the freedom-of-information and protection-of-privacy commissioner for British Columbia, David Loukidelis, started his own legal and expert investigation into this very question about how to protect the privacy of British Columbians in the face of government outsourcing of administration of personal information. This government decided to proceed without the expertise of Mr. Loukidelis's report. We, of course, expressed serious concerns about that.

Today — it could have been late yesterday, actually — we received a copy of the letter from David Loukidelis, the information and privacy commissioner. His concerns and questions arise out of section 23. I think because the letter is so new.... I'm sorry, Mr. Chair. We received it at the close of the business day yesterday. I think I'll read the letter into the record so that all members have the benefit of what his comments are.

The letter is addressed to the Minister of Management Services. The letter is also copied to the Speaker, to the Government House Leader, to the Attorney General, to the leader of the New Democratic Party and to me as Opposition House Leader.

"Dear Minister:

"I indicated in my October 8, 2004, letter to you that my comments on Bill 73 will be made concurrently with release of our report on the USA Patriot Act implications of outsourcing. That remains the case. My office is reviewing Bill 73 at this time, and I intend to release my comments and the report on the USA Patriot Act implications of outsourcing on October 29, 2004."

I note that today is October 19, Mr. Chair, as an aside. We would have had the benefit of the expertise well within this sitting and within days.

Back to the letter from the privacy commissioner.

"I find, however, that an issue arises from Bill 73 that requires clarification to enable me to offer an informed and fair assessment. I raise this question in light of the government's promise that Bill 73 contains 'tough new legislative measures' that protect privacy and ensure that British Columbians enjoy 'highest protection' for privacy in Canada.

"Specifically, I request clarification on the intent and effect of section 23(2) of Bill 73. The government says Bill 73 will create new rules and protections around the outsourcing of public functions or services to private sector service providers. Section 23(2), however, provides a grace period during which outsourcing agreements can be entered into free of the new rules and protections.

"Section 23(2) reads as follows: '(2) The new disclosure rules apply in relation to all contracts for which the contract commitment date is later than (a) October 12, 2004, in the case of a contract entered into by the government or a ministry, or (b) the date on which this Act receives Royal Assent, in the case of a contract entered into by another public authority.'"

[1020]

I'm reading from his letter, and I continue.

"Section 23 as a whole reads as follows: 'Transitional — existing contracts and research arrangements. 23 (1) In

this section: "contract" means (a) a contract entered into by a public authority for the provision of services by a service provider within the meaning of the Freedom of Information and Protection of Privacy Act, or (b) a contract or other arrangement entered into by a public authority under which personal information is disclosed under section 35 [disclosure for research or statistical purposes] of the Freedom of Information and Protection of Privacy Act; "contract commitment date" means (a) in the case of a contract that a public authority is legally obliged to enter into as a result of a completed binding competitive process, the date on which the process was completed, or (b) in any other case, the date on which the contract was entered into by the public authority; "new disclosure rules" means Part 3 of the Freedom of Information and Protection of Privacy Act, as amended by this Act, other than section 30.3 of that Act."

As an aside, Mr. Chair, that's the whistle-blower protection.

"Previous disclosure rules" means Part 3 of the Freedom of Information and Protection of Privacy Act, as it read before its amendment by this Act; "public authority" means (a) the government, (b) a public body within the meaning of the Freedom of Information and Protection of Privacy Act, or (c) a director under the Child, Family and Community Service Act."

"Section 23(2): 'The new disclosure rules apply in relation to all contracts for which the contract commitment date is later than (a) October 12, 2004, in the case of a contract entered into by the government or a ministry, or (b) the date on which this Act receives Royal Assent, in the case of a contract entered into by another public authority.'

"Section 23(3): 'Subject to subsection (4), in relation to a contract for which the contract commitment date is on or earlier than the applicable date under subsection (2), (a) the previous disclosure rules are deemed to continue in force and apply to the contract, until the end of the term of the contract as it was on that contract commitment date, and (b) the new disclosure rules apply to the contract after that time.'

"Section 23(4): 'In relation to the services provided under a contract to which subsection (3) applies, the public authority must use all reasonable efforts to come into compliance with the new disclosure rules as soon as reasonably possible.'

"Section 23(5): 'For certainty, the application of section 30.3' — again, Mr. Chair, the whistle-blower protection — 'of the Freedom of Information and Protection of Privacy Act is not affected by this section.'"

The privacy commissioner for British Columbia goes on to say:

"As I read section 23(2), Bill 73's new personal information protection rules do not apply to any outsourcing contract in the case of a ministry of the government entered into before October 12, 2004, five days after Bill 73 received first reading."

My question is as follows. I pose this question to the minister as it is posed by the freedom-of-information and protection-of-privacy commissioner. First question. In the case of the government and its ministries, which contracts exist for which the contract commitment date is before October 12, 2004? That's his first question.

**Hon. J. Murray:** First, I am going to reiterate for the member opposite that this government, when the issue

was brought to our attention in February, immediately stated our concern for the privacy of people's personal information and said that we would look into this issue.

We in no way resisted admitting a problem. We took action in February. We began to investigate the issue, and we stated publicly that any concerns around the privacy of personal information were concerns we shared and that we would make sure to take strong action to reduce any risks that the Patriot Act might place on the privacy of personal information. I do want to state that for the record yet again, because repeating that we resisted admitting a problem does not make it so. We did not do that.

In answer to the member's question, all of the ASD contracts that have been the topic of concern when this was first raised by the BCGEU will be covered by this act, because it dates the coverage of all ministry contracts as of October 12, and none of the ASD contracts have been signed yet.

[1025]

**J. MacPhail:** My question had nothing to do with the BCGEU. I'm raising the concerns of the privacy commissioner. In the case of the government and its ministries, which contracts exist for which the contract commitment date is before October 12, 2004? Perhaps the minister could respond to that question in detail.

**Hon. J. Murray:** We can assure British Columbians that none of the major alternative service delivery contracts were signed during this five-day period. I do not have a record of each and every contract that has been signed with a private service provider over the past decades. Many of those contracts were signed under a previous administration, and I do not have a list of all contracts that have been signed by this government before October 12.

**J. MacPhail:** This is a very serious matter. I'm not quite sure why the minister is deciding to play politics with it. Talking about previous administrations.... Did the government's record wipe out with the change of an election? No. I'm not quite sure why she brings up the BCGEU. These are very serious concerns.

First of all, has the minister or her staff had a chance to answer the questions of the privacy commissioner? Has she read the letter, and has she had a chance to answer his questions? Let's start there.

**Hon. J. Murray:** We are also in receipt of the privacy commissioner's letter as of yesterday, and we will make every attempt to answer all of his questions.

**J. MacPhail:** Is the minister planning on ramming the legislation through before the questions of the privacy commissioner are answered?

**Hon. J. Murray:** I intend to achieve royal assent at the first available opportunity. It is important to me that the loopholes that are currently in our laws with

respect to potential risks from the USA Patriot Act are closed as quickly as possible.

**J. MacPhail:** Yes, exactly. That's what the government is planning on doing — ramming this legislation through before these questions are answered and before we've had the benefit of the expertise of the privacy commissioner.

That's a very specific question he asks. I'm trying to get this information prior to the government ramming the legislation through. The contracts that this government — the alternate service delivery contracts.... Is that what the minister means by ASB? What does the minister mean by ASB contracts?

**Hon. J. Murray:** By ASD, I mean the alternative service delivery contracts that were identified as the initial source of concern around the USA Patriot Act.

**J. MacPhail:** Well, what were those? Tell me then. Just read it into the record. The minister is adamant that everybody's concerns have been taking place.... All I'm asking her is to put into the record those contracts and how the legislation applies to them. It's just the list.

**Hon. J. Murray:** The ASD contracts are HBO, which has to do with MSP information, revenue collection, workstations and payroll.

**J. MacPhail:** I'm sorry. What was the first one? Not everybody is familiar with initials. What is that contract? Is that the Maximus contract?

**Hon. J. Murray:** Health benefits operations.

**J. MacPhail:** Is that the contract commitment made to Maximus? Perhaps the minister could explain to us that the definition of contract commitment as listed in this legislation does not apply to any of these three.

[1030]

**Hon. J. Murray:** There has been no commitment made to Maximus with respect to the HBO project. No contracts have been signed at this point.

**J. MacPhail:** Let me again read into the record the definition of contract commitment, because there was an announcement made that Maximus was the company to which the government was going to give the contract. That's on the public record.

Here's what "contract commitment date" is described as in this legislation: "(a) in the case of a contract that a public authority is legally obliged to enter into as a result of a completed binding competitive process, the date on which the process was completed, or (b) in any other case, the date on which the contract was entered into by the public authority."

Mr. Chair, the binding competitive process — we checked this just this morning — has been completed for the health benefits alternative service delivery

model, and a single contender has been announced. Perhaps the minister could give reassurances that that language doesn't apply to Maximus. And can she tell us how she received those assurances?

**Hon. J. Murray:** Joint solution projects such as HBO can be changed right to the date of the contract being signed, so no commitment has been made. I can assure the House that there have been no ASD contracts completed. All will apply after the October 12 period, and so the laws will be in effect for all of those projects.

**J. MacPhail:** Well, I find that interesting, because just yesterday we were talking about gambling. This government said that they had to proceed with casinos because a previous government had given a head nod and started a process to look at other casinos. The Solicitor General said: "Well, that's enough of a legal commitment that we had to proceed with those casinos. We had no choice." There wasn't even a completed.... The RFP process, the request-for-proposal process, wasn't even anywhere near finished, but the Solicitor General — and I think he likes to refer to himself as the top cop in the province — said that was enough of a legal obligation.

So can the minister tell us exactly...? First of all, has Maximus, the successful single competitor in the completed competitive bidding process, given the minister a letter confirming that they understand they do not have the contract and have no legal access to pursue their right to the contract?

**Hon. J. Murray:** The ASD projects are being negotiated under a different legal process than the casinos, and I would invite the member to address the questions to the Solicitor General with respect to casinos.

The ASD projects legal process includes that changes can be made up to the date of the contract being signed. So no legal commitment is made until the contract is signed.

**J. MacPhail:** Can the minister read into the record exactly the words of the agreement between Maximus and this B.C. provincial government that she has just stated — the exact legal words, please?

**Hon. J. Murray:** The vendors are well aware of this legal process that they've entered into. I do not have the contract for the HBO process here in front of me, so no, I can't read that into the record at this stage. We can find that text and make it available to the member.

[1035]

**J. MacPhail:** Well, it's the crux of the entire legislation, Mr. Chair — the entire legislation. I believe this is the first time we've ever seen legislation that defines "contract commitment" as opposed to "contract." Clearly, that language has meaning.

It's the entire basis of this legislation — about protection of privacy. The privacy commissioner is asking for an explanation of what that means in the context of

the current work of this government to outsource private information of British Columbians. The minister has come completely ill-prepared and doesn't even have the legal language.

All right. Let me ask this, then. Has Maximus, the American company to whom this government has made a commitment to manage the private health information of British Columbians, given this government a legal undertaking that they will not challenge this legislation? Have they seen the legislation, and has the government received a legal undertaking that Maximus won't challenge this legislation?

Why do I ask that question, Mr. Chair? Because there are legal opinions out there saying that this act is meaningless to a company that is subject to the USA Patriot Act, and that includes Maximus.

**Hon. J. Murray:** Maximus understands that no commitment has been made. The company understands that this law will apply to them. There is no signed contract. There has been no commitment made.

I would like to also remind the member opposite that outsourcing has taken place for decades not just in this government but in provinces right across the country, because it is a way that services can be provided to the public at lower cost and for more timely and efficient service.

**J. MacPhail:** What has that got to do with anything? We're talking about new legislation in the United States of America, the USA Patriot Act — that's anti-terrorism legislation — that lets the U.S. government, their intelligence agencies, go into every personal aspect of private information. I'm not quite sure. Does the minister miss that point? That's what this legislation is about. The USA Patriot Act didn't exist in 2002. That's the point here.

Americans have very strongly held views. American legislators and American intelligence agencies have very strongly held views about what their breadth and depth of rights are under the USA Patriot Act.

Well, let March 31, 2004, an information bulletin from the British Columbia government.... Its opening line is: "The government has selected Maximus Inc. to work with the province on developing a new service delivery model for the Medical Services Plan" — MSP — "and Pharmacare." Then it goes on to say.... It actually explains the RFP process that began on July 29, 2003, and led to the selection — the selection — of Maximus as the successful bidder. That's why I'm asking the minister to tell me, the privacy commissioner and the public that Maximus agrees that they have no legal recourse after this legislation is passed.

**Hon. J. Murray:** They don't have to agree or disagree. This is the law of the province. The contract has not been signed. There is no commitment to Maximus at this point, and that's the way it stands.

**J. MacPhail:** Well, that's taking a cavalier approach to taxpayers' money. In other words, the government

doesn't have any idea whether they're open to a lawsuit or not. They have no idea. In fact, the minister tries to say that this process is different from the casino approval process. Sorry, it isn't.

[1040]

The Solicitor General said: "Oh, we'd open ourselves up to legal challenges if we hadn't pursued that head nod or that 'yeah, feel free to put forward a proposal to the government for a casino.' We would have opened ourselves up to legal challenges."

This is a multi-multimillion-dollar contract, and this government hasn't even got a legal opinion first on what its contractual obligations are to Maximus or on what the consequences may be in terms of this legislation. That is absolutely outrageous, and I'll tell you that it's sloppy as heck. Who has any idea why this government is ramming this legislation through before these questions are answered, before the minister actually provides the legal context of the language and before we've had the benefit of the report from the privacy commissioner? I'm sure the privacy commissioner will be.... Well, I shouldn't speak for him. I won't speak for him. He's an independent officer.

His next question.... Of course, the minister stands up and politicizes the whole thing by saying: "Oh, I'll tell you about all the contracts that have to do with the issues raised by the BCGEU." Well, that's not what the questions are about. The privacy commissioner is asking for all contracts that exist for which the contract commitment date is before October 12, 2004.

Why did the government put in the language of "contract commitment date"? What meaning does it have?

**Hon. J. Murray:** Contract commitment date refers to standard RFP processes, not the ASD process. The contract commitment date is the deadline for the submission of proposals to that process. That's the contract commitment date.

**J. MacPhail:** Well then, for sure the government can give me a list, and the privacy commissioner can get a list, of all the contract commitments that have been made that are subject to this legislation. If it's just a straight RFP process, that's an easy list to get, and that's what the privacy commissioner is asking for. The minister has had the benefit of this letter for as long as I have.

What's the difference between the ASD...? For those who aren't government junkies, alternate service delivery of private information management is what that means. What was so different about the awarding of the Maximus commitment from the regular RFP process? Why was it so different? Perhaps the minister could enlighten.... That's new information to us.

**Hon. J. Murray:** Just to confirm for the member opposite's benefit, we received the letter from the commissioner yesterday. We will be canvassing the ministries for all project information to be able to answer those questions of the commissioner as best as possible.

Why move ahead with this quickly? Because there is a loophole that we do want closed at the earliest opportunity. We did intend to wait until the commissioner's report was tabled, but as the member knows, it has been delayed for about two and a half to three months. We felt it was important to get this loophole closed as early as possible.

[1045]

We have done substantial consultations. We have been working on this proactively since February. We have been actively consulting with individuals, organizations and public bodies — including the commissioner — for the past three months. It's time to take action to close that loophole. The member opposite may prefer to have that loophole still there for the foreseeable future, but I don't. I want to close it as soon as possible.

**J. MacPhail:** Well, I'll tell you that what I'd prefer is that this government not outsource the management of private health information when we have American legislation that is deeply troubling. That's what I'd prefer. There's no reason why this government can't keep the management of that information within the public service, except for an ideological difference — a huge ideological divide.

What is the difference between the process this government went through to outsource private health information to an American company and the regular request-for-proposal system?

**Hon. J. Murray:** The JSP process, the joint solutions process, is being used to seek solutions to business needs in government. Rather than setting out a request for proposal that identifies the solution, whether it be the system or the process, the elements of how to manage information.... Rather than setting that out and seeking proposals for the delivery of a defined process or system, which would be the normal RFP process, the government is entering into joint discussions with a set of proponents that have been selected on an open and transparent basis to create solutions to a complex business challenge.

The joint solutions process enables the government and the private sector providers to wrestle with the business problem and look at a variety of ways of solving that problem. Out of that, we're expecting to end up with much more effective solutions that will meet the public interest of increased service to the public and lower costs.

**J. MacPhail:** That's why I'm asking the minister where she's got a legal opinion to say that that's any different than an RFP process. Maximus views it differently, based on the March 31, 2004, announcement of the government.

This government can use all the jumbo-mumbo language they want, but what she's just described could be the RFP process as well. Besides, the legislation doesn't talk at all about the request-for-proposal process. It talks about contract commitments.

What has been the discussion between Maximus and the government in terms of this legislation?

**Hon. J. Murray:** Maximus would have been one of the myriad of organizations consulted as we went forward to bring in the amendments to the Freedom of Information and Protection of Privacy Act.

**J. MacPhail:** What have been the legal exchanges?

**Hon. J. Murray:** Legal exchanges with Maximus would be a matter for the Ministry of Health Services to answer. That's where the negotiations are taking place.

**J. MacPhail:** Oh, really. Well, could we stand this legislation down and get the Minister of Health Services in here to answer these legal questions about protection of privacy? Is that what the minister is proposing? I'd be happy to do that, Mr. Chair.

[1050]

**Hon. J. Murray:** The protection-of-privacy principles are in the contract. The contract has not been signed yet. A very comprehensive submission has been made by Maximus to the privacy commissioner, which is publicly available for the member to review to assure herself that the mitigation measures the company is proposing are much stronger protection than currently exists with the service provider dealing with health information that also has links to the United States.

**J. MacPhail:** Yes, all brought in by this government. Let's just say....

Interjection.

**J. MacPhail:** Oh, I see everybody scribbling down. Let me be clear. MSP privacy information was fully protected under the previous government — fully protected. No one challenged that.

You know, Mr. Chair, these are questions that the privacy commissioner himself is asking. Let's go on to read the rest of the questions on this particular matter that the privacy commissioner is asking. Of course, the minister is focusing only on the one contract. We have a list of others that we'll be asking for specifically. She refuses to reveal the information, so we'll ask for it.

Here's what the privacy commissioner asks:

"In respect of each such contract, which ministry is involved? What services or functions are subject to the contract? What kinds of 'personal information' are involved? Does the service provider have any 'affiliate' who is or could reasonably be expected to be subject to the personal jurisdiction of a United States court? What is the term or duration of each contract? Is there any option or right to renew the contract term, and if so, what is the term of each renewal, and how many renewals are possible? Does the contract contain any provisions respecting compliance with FOIPPA, including such as those contemplated by appendices E through H of the govern-

ment's July 23, 2004, submission to my office respecting the USA Patriot Act?"

**Hon. J. Murray:** Just to correct some misinformation put out by the member a moment ago, MSP information management was outsourced to IBM under the previous government, not under this government. The current law, prior to the amendments that I'm bringing forward, permits outsourcing to U.S.A. companies with no restrictions. That's the loophole we need to close for existing contracts as well as for the ASD contracts that we're negotiating right now.

**J. MacPhail:** How dare the minister and/or her ministry suggest that the public service managing a contract with IBM is the same as what this government is doing? How dare they even suggest that? Mr. Chair, I will tell you: there would be no loophole that needed to be closed if this government hadn't completely outsourced every aspect of the management of our private information. In fact, that's what the Minister of Health Services tried to say when the BCGEU raised this issue: "Oh, there's nothing changed."

[H. Long in the chair.]

Then he was forced to back off. As usual, this minister likes to play politics, as does this whole government — likes to play partisan politics with a very serious issue.

When will the minister be able to answer the questions that the privacy commissioner has posed? Why aren't they available? Isn't this a survey that the minister should have done in preparing this legislation and drafting the first time ever we have a definition of contract commitment?

**Hon. J. Murray:** The commissioner is asking for the contracts signed in the five days between October 7 and October 12. We will be answering those questions as soon as possible.

The loophole that we're referring to exists as of when the Patriot Act was brought forward in the United States. It does apply to existing contracts with service providers. That loophole is why it is very important that we bring forward these legislative amendments as soon as possible.

[1055]

**J. MacPhail:** No kidding. And ten days would make a difference? Interesting. I think there are many other aspects of how this government could have shut the loophole without bringing in this legislation.

Is the minister refusing to answer the questions outlined by the privacy commissioner? Does the minister not have this information available? Was this information not part of the decision-making process to bring this legislation forward?

**Hon. J. Murray:** We will be answering as soon as possible the commissioner's question as to which contracts were signed, if any, by ministries between Octo-

ber 7 and October 12. That's not information that we could possibly have prepared before October 12. We will be preparing that information and providing it to the commissioner as soon as we can.

**J. MacPhail:** Well, tell me: is the minister saying that the definition of "contract commitment date" only applies to the period between October 7 and October 12, 2004? Or does it apply previous to October 12?

**Hon. J. Murray:** Yes, it does apply before October 7 to October 12.

**J. MacPhail:** So it's more than just the contracts or the commitments made between October 7 and October 12 that he's asking for. Is that not right?

**Hon. J. Murray:** That's not correct.

**J. MacPhail:** Perhaps you could run through how that works, then, in detail — how the contract commitments and the contracts before October 7 are protected by this legislation. What the privacy commissioner is seeking out are the contracts or the commitments made that would deem this legislation not applicable.

**Hon. J. Murray:** And we will be answering the privacy commissioner's letter and answering those questions as soon as possible.

**J. MacPhail:** Mr. Chair, I'm asking why the minister is specifying that the information she'll provide is only for commitments or contracts made between October 7 and October 12. The minister herself brought that up.

**Hon. J. Murray:** That's the question the commissioner is asking of me in the letter.

**J. MacPhail:** Why is the minister bringing in the date October 7 when the commissioner's question is about "entered into before October 12...five days after"? He's saying that the October 12 date is five days after the introduction of the legislation. Yes, that's right. He's acknowledging that the date in the legislation is five days after first reading.

But his question is, in the case of the government and its ministries: which contracts exist for which the contract commitment date is before October 12, 2004? The legislation does not apply to contract commitments that were made before October 12, 2004. It doesn't say anything about first reading on contract commitment.

**Hon. J. Murray:** The commissioner's request for contract commitment dates before October 12, 2004, needs to be read in context with the introductory paragraph, which talks about the five days after Bill 73 received first reading.

**J. MacPhail:** The legislation specifically excludes its application to contract commitment dates that were made prior to October 12, 2004. Am I correct on that?

**Hon. J. Murray:** The answer is yes.

[1100]

**J. MacPhail:** Exactly. The privacy commissioner is asking about all of those contracts or contract commitments made before October 12, 2004, to which the legislation doesn't apply. If for some reason Mr. Loukidelis is only narrowing it to October 7 to October 12, which is not the way I read his letter, can the minister supply to me all of the contract commitments or contracts made before October 12, 2004, to which the legislation does not apply, as she has just acknowledged?

**Hon. J. Murray:** We are providing to the commissioner the information about contracts signed between the 7th and the 12th because that's how we interpret this letter. We will be happy to supply that information to the member opposite.

The legislation does cover existing contracts, as well, in this way. The public body must use all reasonable efforts to come into compliance with the new disclosure rules as soon as reasonably possible for pre-existing contracts, which number in the hundreds and hundreds. That is how those contracts are being covered.

In addition, the commissioner will have oversight authority to review the existing contracts and make sure that reasonable compliance efforts have been made.

**J. MacPhail:** As always, this government takes — in the case of the privacy commissioner's letter, I would suggest — the narrowest misinterpretation of what information he seeks. Instead of a cooperative relationship.... The language is very clear in the legislation. The minister has just admitted there are hundreds of contracts that are not covered by this legislation because they put a cut-off date of October 12 in the bill, and anything previous to that ain't covered. It's up to the goodwill of the public bodies to come into compliance.

Wow, that's breakthrough legislation. That is cutting-edge legislation. That makes me feel just fabulous about what this government is doing with my personal information.

Again, of course, I predict that we'll have this legislation passed the minute I stop asking questions. I just expect that's what will happen.

Well, let's go on. Let's go on and find out the rest of the questions that the privacy commissioner has asked. I'm quoting from the letter from the privacy commissioner. "The new privacy rules also do not apply, in the case of any of the roughly 2,000 other public bodies in British Columbia, to any outsourcing contract entered into before royal assent is given to Bill 73." Of course, the minister just acknowledged that.

The privacy commissioner says: "My question is as follows. In the case of public bodies other than government and its ministries, which 'contracts' exist for which the 'contract commitment date' is before royal assent?"

**Hon. J. Murray:** We'll be attempting to provide that information to the commissioner as well.

As the member opposite will be aware, when there are 2,000 public bodies including everything from small water districts to municipalities right across the province, that's not information that can be instantly ascertained. Coverage of a bill normally occurs only after first assent. That's the case with this legislation as well as for the public-body contracts.

[1105]

**J. MacPhail:** No, Mr. Chair, that's not the case.

When the freedom-of-information and protection-of-privacy legislation was brought in, in various stages, contracts weren't excluded based on some date. Why was the date October 12 picked? What is the reason why this government has decided to exclude coverage of over 2,000 public bodies?

**Hon. J. Murray:** In the course of our consultation, which was very broad and included some of the 2,000 public bodies, it was clear that those bodies needed some time to assess the legislation from the time it was tabled until they were forced by law to be in compliance. That's why there is a time period between the tabling of the legislation and royal assent — for these public bodies to bring their contracts into compliance.

**J. MacPhail:** Well, let me just give one example that's been brought to our attention where people are very, very concerned. I'm leaving the issue of the privacy commissioner's letter just for a second.

We've been contacted by AIDS organizations, and they're very concerned about this legislation. I'm sure the minister is aware that they're concerned that the sharing of personal health information has, for people with AIDS or HIV, much greater implications in the United States than here. That's not me saying this. HIV/AIDS organizations have brought to our attention that freedom to travel, mobility restrictions, could be affected at the border with the sharing of such information. We now see that some of these bodies that have that kind of information aren't subject to this legislation. What possible assurances is the minister giving to people with HIV/AIDS?

**Hon. J. Murray:** The organizations mentioned by the member have attended our public briefings and been part of the consultation. We are aware of the concerns. That's why we're moving as quickly as possible with these legislative amendments.

**J. MacPhail:** Why does the minister keep saying that if we ram this legislation through, that kind of question is answered? All public bodies that have contracts prior to October 12, 2004, aren't affected by this legislation, even upon royal assent. Organizations that have personal information about people with HIV/AIDS are subject to the USA Patriot Act, not this legislation. What's the answer the minister has to that?

**Hon. J. Murray:** All public bodies are subject to this law. If the contracts are signed after the dates set out,

they are fully subject to the law immediately. If their contracts have been signed in the past, whether it's two years ago or ten years ago, they must use all reasonable efforts to come into compliance with the new disclosure rules as soon as is reasonably possible.

If there's a concern that an organization is not doing that, anyone can apply to the commissioner, who does have oversight authority, to review contracts and ensure that reasonable compliance efforts have been made under this law. When contracts are renewed or renegotiated, they must be subject to this law. So all public bodies are affected by this law.

**J. MacPhail:** Wow. I'm sure people with HIV/AIDS will feel really assured by the minister's hollow commitment. I guess we're poking holes in the minister's commitment that this is groundbreaking, first-class legislation. People with HIV/AIDS whose information resides with public bodies whose contract with the government is prior to October 12 have no protection whatsoever — none. Absolutely none.

[1110]

Now let me go on to read the questions. That's specifically why the privacy commissioner is asking for this information — so he can do an assessment of how good this legislation is or not. Feel free, other members, to jump in and show where I'm wrong or that the privacy commissioner is wrong.

The privacy commissioner goes on to ask, for very good reason, these specific questions based on the minister's admission that contracts with government prior to October 12 aren't covered by this legislation except by goodwill — except by goodwill, nothing else. There is no legal enforcement whatsoever.

The privacy commissioner goes on to say, and I read from his letter:

"In respect of each such contract, which public body is involved; what services or functions are subject to the contract; what kinds of 'personal information' are involved; does the service provider have any 'affiliate' who is or could reasonably be expected to be subject to the personal jurisdiction of a United States court; what is the term of each contract; is there any option or right to renew the contract term and, if so, what is the term of each renewal and how many renewals are possible; does the contract contain any provisions respecting compliance with FOIPPA, including such as those contemplated by appendices E through H of the government's July 23, 2004, submission to my office respecting the USA Patriot Act? I ask the government to make inquiries to the questions set out above and, at the earliest possible opportunity, provide me with a response."

Clearly, the minister isn't going to do that. The reason why these questions are important is to find out just how much protection British Columbians actually have from the incursion of a foreign law that could reveal personal information that otherwise wouldn't be revealed in their own country. Yet the minister won't answer those questions.

To be fair to the privacy commissioner, who did not ask me to bring up these questions but did send me the letter, here's what he says in his concluding paragraph:

"The answers to these questions, in relation to public bodies of all kinds in British Columbia, would assist me to understand and comment on Bill 73 and how it protects privacy in the manner promised on its introduction by the government. This inquiry is made in a sincere attempt to understand the intent and effect of Bill 73 so that I may review and comment on it in light of all pertinent information."

Well, Mr. Chair, I see that I am not going to get the answers, so I can only assume that before this legislation is rammed through, the privacy commissioner isn't going to get the answers.

The minister says she did this wide-ranging consultation, and this is what she came up with. Well, let's talk about B.C. Hydro. Let's talk about what B.C. Hydro has in the way of information. Let's be clear that B.C. Hydro has contracted out, outsourced — actually, privatized, truth be told; it is privatized — all of its billing information and personal management information to Accenture. Here is the kind of information that Accenture has. It has all your credit information — everybody's credit information. It's got our social insurance numbers, family information — all of that. Accenture is a company subject to the USA Patriot Act. Okay.

Here's what B.C. Hydro wrote to David Loukidelis, the privacy commissioner, on August 6, 2004, in responding to a question. Here's the question Mr. Loukidelis asked B.C. Hydro. First of all, he asked: "Does the USA Patriot Act permit U.S. authorities to access personal information of British Columbians that is, through the outsourcing of public services, in the custody or under control of the U.S.-linked private sector service providers? If it does, under what conditions can this occur?"

[1115]

Answer by B.C. Hydro:

"B.C. Hydro believes that there is an increased legal risk, under the USA Patriot Act, to personal information if the information is located within the United States. Putting the personal information of British Columbians in the custody or control of a company with corporate or business links in the U.S. may present some risks."

Then they go on to give a specific scenario.

The second question by Mr. Loukidelis is.... I'd be happy to table this whole letter, Mr. Chair. The second question Mr. Loukidelis poses to B.C. Hydro is:

"If it does, what are the implications for public body compliance with the personal privacy protections in the Freedom of Information and Protection of Privacy Act...? What measures can be suggested to eliminate or appropriately mitigate privacy risks affecting compliance with the Freedom of Information and Protection of Privacy Act?"

That's Mr. Loukidelis's question.

Hydro responds, and I read directly from their letter:

"It would appear that the best way to avoid putting British Columbia's personal information under the jurisdiction of the U.S. courts issuing orders under the USA Patriot Act would be to avoid putting the personal information (a) physically into the U.S. and (b) in the custody of a company with corporate and business links in the U.S.... The trade-law implications of such strategies would need to be considered."

Well, isn't that interesting? Does Accenture, who has a multi-multimillion-dollar contract for outsourcing with B.C. Hydro...? Is that contract subject to this legislation?

**Hon. J. Murray:** All contracts are subject to this legislation. If they're existing contracts, they must use reasonable efforts to come into compliance. Contrary to the member's previous statement that there is no recourse except goodwill that a contract must be brought into compliance, the commissioner can make a binding order to force a public body to make reasonable efforts to come into compliance with this legislation in terms of an existing contract.

Also, I do want to clarify in terms of the member's statement that the privacy commissioner will not get answers to the questions in his letter. We received that letter yesterday. We will make every effort to answer the questions at the earliest opportunity, and the commissioner can use those answers in taking action, if appropriate, to put forward a binding order for a public body to come into compliance.

With respect to the Accenture question, the commissioner's request of B.C. Hydro with respect to the Accenture contract is exactly what we're doing. Accenture has a head office in Bermuda, so it is not subject to the USA Patriot Act as a corporation. However, any data stored on a temporary or permanent basis in the United States could be vulnerable to the USA Patriot Act, and that's exactly what's not acceptable to us as a government. That's exactly why we're filing amendments to say that that data cannot be stored on soil outside of Canada — so that it will not be subject to the USA Patriot Act or to the reach of any other country that doesn't have privacy laws that are as strong as ours here in British Columbia.

**J. MacPhail:** That's what the act says, but the act doesn't apply to Accenture. I wish the minister would stop obfuscating on that issue. The Accenture privatization contract was signed prior to October 12, 2004, and the law doesn't apply to Accenture. She knows that, so what's her solution to that? Oh, the privacy commissioner will deal with that.

The privacy commissioner, who.... This government is completely ignoring his opinion, won't wait for his expert legal opinion, rams the legislation through, comes ill-prepared to answer his questions. All of a sudden it's in his bailiwick to hold Accenture accountable — a man whose budget has been slashed by this government, who doesn't have resources to do the job he needs to do now under the current law. He's the one who is supposed to hold Accenture and B.C. Hydro accountable with no legal protection. Perhaps the minister could tell me how the privacy commissioner will proceed to hold Accenture subject to laws that don't apply to them.

[1120]

**Hon. J. Murray:** The law does apply to the Accenture contract because the act requires that public bodies

must use all reasonable efforts to come into compliance with the new disclosure rules as soon as reasonably possible and, upon renewal of the contract, will be fully subject to the laws at that point.

**J. MacPhail:** What's the definition of "as soon as reasonably possible" in relation to Accenture, and when does the contract expire for Accenture?

**Hon. J. Murray:** With respect to the first part of the question, there is jurisprudence around the answer of what is reasonably possible. With respect to the terms of the Accenture contract, that's not information that I have here. We can provide it to the member, if she requests that.

**J. MacPhail:** I have requested it. The privacy commissioner has requested it.

Now we have a multi-multimillion-dollar outsourcing contract that has my private information about my credit. What other information does it have? Accenture has that information. The law doesn't apply to Accenture until we don't know when. This minister doesn't have any idea when the Accenture contract would be subject to this legislation. She says there is some jurisprudence on "as soon as reasonably possible." Okay, who would invoke that jurisprudence? Will it be up to the privacy commissioner to hold hearings on Accenture's compliance? What budget increase for the privacy commissioner's office has the government allocated?

**Hon. J. Murray:** The privacy commissioner does have the authority to make sure that reasonable efforts are taken to come into compliance on a reasonable basis. The budget for the privacy commissioner's office is set by a special committee of the Legislature and not by myself.

Just to reiterate, this covers contracts moving forward, and there are hundreds of existing contracts. We don't intend to force every single contract the government currently has with the private sector to be renegotiated, potentially at great expense. But we are taking steps to make sure that on renewal, each and every contract will be subject to these amendments and that in the meantime every contract that is held by a public body must make reasonable efforts to come into compliance as soon as reasonably possible.

**J. MacPhail:** I guess we're finding out that this legislation isn't exactly the great legislation the minister says it is. By her own admission, there are hundreds if not thousands of contracts that are not covered by this legislation. Oh, wait a second. The privacy commissioner can hold these government bodies to account. And oh yes, that privacy commissioner's budget doesn't have anything to do with the Minister of Management Services. That's a legislative committee that has cut the privacy commissioner budget for three years. Yeah, I see.

Who's on that legislative committee? Well, I am, Mr. Chair. I'm on it, and there are ten or 11 Liberal government caucus members on it. They vote to slash the budget. Not me, but the Liberal members do — slash the budget.

[1125]

Here we have a piece of legislation where the holes are so big you could drive an FBI convoy through it, followed closely by the CIA. This government is saying it's the privacy commissioner's obligation to close those loopholes. They show complete and utter disregard for the privacy commissioner's legal opinion on this — legal review, expert review of this — by ramming the legislation through before that review is available. They slash his budget. The minister has no plans. She has nothing to bring to the Legislature to say that they've even thought of the privacy commissioner's budget in terms of being able to do this. She says: "We're not going go back and make those private contractors renegotiate those contracts; we're not going to do that." Wow, I feel really reassured.

The B.C. government has contracted with SunGard, an American corporation, to provide recovery of government data in the event of a disaster. Beginning March 8, 2004, the Ministry of Management Services has been shipping tapes of government data to SunGard in Philadelphia. The data is sent as is, with no encryption or coding. The contract includes running annual tests to ensure the recovery system is in place.

Is this contract covered by this legislation as of royal assent?

**Hon. J. Murray:** The contract with SunGard no longer exists, and we are doing all the backup in Canada as of now.

**J. MacPhail:** When did that happen? Could the minister give me the details of that? What happened? This is a March 8 announcement that I found myself from the Ministry of Management Services. There's no data stored in Philadelphia. What happened? That's interesting.

**Hon. J. Murray:** That was a temporary annual backup storage exercise, and it did take place this spring, in March, as the member has noted. The decision was made in my ministry under my direction to no longer have that contract apply for future backup exercises. We will not be doing the backup exercise next spring, the annual exercise, in the United States.

**J. MacPhail:** There was no encryption or coding on that information. It was sent to SunGard in Philadelphia. How did this government ensure the complete recovery of that information?

**Hon. J. Murray:** The contract the member is referring to.... At the time I was very clear, when asked these questions, that the information that was temporarily in the United States was in the custody of Canadian employees at all times. When it was loaded onto

machines in the United States, it was in the custody of Canadian employees. Anything that was created as a backup was then destroyed, and the information was shipped back to Canada again in the custody of Canadian employees at all times.

I would ask the member the relevance of those questions to this legislation.

[1130]

**J. MacPhail:** They're completely relevant. The transference of information to the United States and the subjecting of that information to the USA Patriot Act relative to this act? Wow. Maybe the minister needs to actually read her legislation.

In terms of this contract, how much did this contract cost? Of course, this was brought in after February, when the minister said she was doing everything she could to manage these issues. Was it a one-shot-exercise contract? Was the renewal aspect that the minister cancelled...?

**Hon. J. Murray:** This contract is not relevant because it no longer exists. What I said was that in February we were clear with the public that we take these concerns very seriously, so we will immediately begin to investigate and seek legal advice as to whether there's a risk and, if so, what kind of mitigation measures should be applied. We reached our conclusions in time to put a submission to the privacy commissioner in July.

**J. MacPhail:** Well, except that this minister put in place this contract to store government information on U.S. soil, and the USA Patriot Act doesn't care who's carrying the information. The USA Patriot Act still applies if it's on U.S. soil. The minister made the decision to store information on U.S.A. soil in March, a month after she claims she was terribly concerned about this.

I need evidence of how the contract was terminated. Were renewal clauses in the contract? Were there costs to its termination? Those questions are all relevant, because there certainly wasn't any announcement. Or was it a public announcement that the minister had cancelled the contract? Did she provide information about the terms of cancellation?

**Hon. J. Murray:** The exercise that was taking place of temporarily doing backup in the United States is no longer possible under the current legislation. There will be no storage of information outside of Canada on a temporary or permanent basis under these amendments.

**J. MacPhail:** How long was the contract with SunGard for, and how much, if anything, did it cost to cancel it?

**Hon. J. Murray:** I'm happy to provide a briefing to the member on that past contract and any of the details that the member may request. It's not relevant to the legislation that we're debating here.

**J. MacPhail:** I hear a minister avoiding answering a question. Let me tell the minister how it's relevant. If this

contract was cancelled because it didn't protect the personal private information of British Columbians as a result of the USA Patriot Act, it's a pretty good indication of what future costs there may be with the application of this law to other contracts. I know the minister doesn't like to see those links, but the taxpayer might.

What are the implications for cancelling a contract? Maybe there weren't any. Why doesn't the minister just stand up and say it didn't cost the taxpayer anything? Is there a problem with saying that, or did it cost the taxpayer something? It's directly relevant for the future application of this legislation.

What happens if the privacy commissioner orders a public body to come into compliance with the act and they have to change the way they do business with U.S. contractors? Isn't that relevant? I'd be happy to just hear the information that the cancellation of the SunGard contract didn't cost the taxpayer a cent.

**Hon. J. Murray:** We will provide that information to the member. It does bring up the question of whether she's suggesting we should not be passing this amendment due to the costs that may be incurred by public bodies and service providers.

[1135]

**J. MacPhail:** No, it doesn't bring up that question. It brings up whether the government has even thought of that. Has the government even thought of the taxpayer implications? Have they budgeted for it? It's called prudence. Have they budgeted for the freedom-of-information and protection-of-privacy commissioner's increased workload? No. The minister says no, that's not her responsibility.

These are due-diligence questions that need to be answered in the face of legislation. Why is the minister refusing to answer the question about the SunGard contract? She was happy to stand up and take personal credit for going in there as minister, and she personally cancelled the SunGard contract. Well, I'm sure she had all of the information available to her about the implications of cancelling that contract. How much, if anything, did the cancellation cost the taxpayer?

**Hon. J. Murray:** We will provide that information to the member opposite. It sounds to me that the very arguments of costs to the taxpayer, prudence, and so on and so forth.... The member opposite is making exactly the arguments in support of why we have not made this legislation retroactive to every single contract that public bodies have with the private sector. Instead, we have required them to use all reasonable efforts to come into compliance as soon as is reasonably possible.

**J. MacPhail:** Mr. Chair, let me just run through this one more time, because I'm horrified at the minister's answers. I'm horrified at the fact that a Liberal government would let this legislation slip through, which is so ridden with holes that we had no protection as British Columbians — virtually none — prior to Octo-

ber 12. Here is what I'm saying. Thousands of contracts with this government are not covered by this legislation, and hundreds of public bodies are not covered by this legislation — except through enforcement by the privacy commissioner.

The government hasn't considered any of the fiscal implications of this. Maybe if they had actually done some due diligence around how much this is going to cost the taxpayer, they'd decide not to outsource, but that would undermine their ideological zeal for privatization and outsourcing. Better to have no information about what it really means — the cost to the taxpayer of outsourcing — than to undermine their ideological zeal to outsource.

That's why I'm asking these questions. The reason why the minister isn't offering answers to these questions is because she knows the answers, and she doesn't want the taxpayer to know what their ideological agenda costs them. The minister, on the one hand, says: "Oh, it sounds like the member" — referring to me — "is agreeing with the fact that it made sense not to make this retroactive." First and foremost, I want the private information — personal information — of British Columbians protected from foreign law.

I want this government to stop outsourcing personal information. I want this government to explain what it costs to outsource that information. I want this government to actually properly fund, then, and put together a budget — which is what any good corporate entity does — for what the implications are for the privacy commissioner in having to uphold the principles of this legislation on those hundreds of organizations that are not covered by this legislation.

The minister hasn't done any of that, Mr. Chair. We'll be voting against this section.

[1140]

Section 23 approved on the following division:

YEAS — 39

Les	L. Reid	Chong
Brice	Hansen	Bell
Barisoff	van Dongen	Bray
Wilson	Masi	Lee

Thorpe	Hagen	Murray
Clark	Christensen	Abbott
Coleman	Penner	Cobb
Jarvis	Anderson	Hogg
Nuraney	Nebbeling	R. Stewart
Mayencourt	Bennett	Stephens
Locke	Wong	Visser
Halsey-Brandt	K. Stewart	Whittred
Sultan	Hawes	Manhas

NAYS — 1

MacPhail

[1145]

Section 24 approved.

Title approved.

**Hon. J. Murray:** Mr. Chair, I move that the committee rise and report the bill complete without amendment.

Motion approved.

The committee rose at 11:47 a.m.

The House resumed; J. Weisbeck in the chair.

### Report and Third Reading of Bills

Bill 73, Freedom of Information and Protection of Privacy Amendment Act, 2004, reported complete without amendment, read a third time and passed.

Hon. S. Hagen moved adjournment of the House.

Motion approved.

**Deputy Speaker:** The House stands adjourned until 2 o'clock this afternoon.

The House adjourned at 11:48 a.m.