



First Session, 39th Parliament

OFFICIAL REPORT OF
**DEBATES OF THE
LEGISLATIVE ASSEMBLY**
(HANSARD)

Tuesday, October 27, 2009

Morning Sitting

Volume 6, Number 1

THE HONOURABLE BILL BARISOFF, SPEAKER

ISSN 0709-1281

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

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FIRST SESSION, 39TH PARLIAMENT

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TUESDAY, OCTOBER 27, 2009

The House met at 10:03 a.m.

[Mr. Speaker in the chair.]

Prayers.

Orders of the Day

Hon. M. de Jong: In Committee A, I call Committee of Supply — for the information of members, the ongoing estimates debate on the Ministry of Housing and Social Development — and in this chamber, committee stage debate on Bill 7, Police (Misconduct, Complaints, Investigations, Discipline and Proceedings) Amendment Act.

[1005]

Committee of the Whole House

BILL 7 — POLICE (MISCONDUCT,
COMPLAINTS, INVESTIGATIONS,
DISCIPLINE AND PROCEEDINGS)
AMENDMENT ACT, 2009

The House in Committee of the Whole (Section B) on Bill 7; C. Trevena in the chair.

The committee met at 10:06 a.m.

On section 1.

M. Farnworth: I see the Minister of Transportation is as enthusiastic as yesterday.

Anyway, just a question. There has been a change in this particular bill from the bill that was tabled back in March, and I'm just wondering why the difference between the two. Why the change this time as opposed to last time?

Hon. M. de Jong: Can I begin — good morning, by the way — by introducing to the House Mr. Gordon McPherson, to my left, and Kathy Dann, to my right, who will help us in exploring this piece of legislation and discussing its provisions.

The change that occurs here is that, by virtue of the definition, it includes an acting Police Complaint Commissioner. I'll just take a moment to verify whether that is in any way different from what was tabled earlier this year. That is the difference between this bill and the existing legislation.

Sections 1 to 7 inclusive approved.

On section 8.

M. Farnworth: Can the minister just explain what is intended by making this change, and does it have any impact in terms of discipline, as I see it refers to disciplining authority?

Hon. M. de Jong: The term "discipline authority" that is quoted in this section previously existed in section 46. Therefore, the previous provision referred to section 46. That, under the provisions of these amendments, changes to where that term now, its relevance, is contained in section 76 instead of section 46.

Sections 8 and 9 approved.

On section 10, section 76.

M. Farnworth: I think this is one of those sections in the bill where there is a substantive change, and I think it's worth understanding how the section is intended to work and what it's implying and what will take place in this section.

This is one of those areas that was outlined in second reading of the bill. It is a significant change in that it is allowing.... If a complaint is dropped, my understanding is that the complaint commissioner has the ability to continue that complaint. Is that correct?

[1010]

Hon. M. de Jong: That is correct. That's not pursuant to section 76, but within part 11, those provisions exist.

M. Farnworth: Is there anything new in the definitions that's changed from the previous piece of legislation and the Josiah Wood report, which was the basis for the legislation with regard to the definitions?

Hon. M. de Jong: An important distinction contained within the definition section refers to the term "complainant." I think the member will see that contrary to what exists presently, the definition of "complainant" has been expanded and, perhaps most significantly, now includes a third party who has not been impacted directly by the act complained of but who, pursuant to this definition and the act in its entirety, will have standing to bring a complaint.

M. Farnworth: What's the ministry's expectation of how "third party" will be interpreted in the sense that...? Is it an individual who may not in fact have anything to do with the crime but may, as an interested third party...? Or is it someone who may have a peripheral interest in, for example, having witnessed something?

I'm thinking, for example, of somebody who.... We're now seeing YouTube videos, for example, or people with cell phones can see something. Even though they're not necessarily the person who is the injured party, they've

seen something take place. They're not happy, and they have the ability to make that complaint. Is that what's anticipated in terms of third party?

Hon. M. de Jong: My expectation is that the provision will be interpreted very broadly. But in addition to that, this is why the subsequent provisions that allow for the Police Complaint Commissioner to consolidate complaints....

In an example like the one the member has given, where an unaffected third party has brought a complaint and subsequently someone directly impacted by an act complained of brings a complaint, the commissioner also enjoys, pursuant to these provisions, the ability to discontinue the former and proceed with the latter on the basis that the subject being complained of will be dealt with. But the person most directly impacted will be at the centre of the complaints process.

M. Farnworth: This section also requires all instances of in-custody and police-related deaths and cases involving serious harm or report of injury to be reported to the Police Complaint Commissioner and requires that there be an external investigation in all instances of in-custody and police-related deaths and cases involving serious harm. There are no exceptions to that at all, are there?

In terms of establishing a timeline for taking steps in a complaint and investigation and disciplinary measures.... It's also one of the issues that's interpreted in this section. Is there an issue — and I'm sure it'll come up later; in fact, I know it does — in terms of timelines? How is this interpreted in terms of dealing with the issue around timelines and the length of timelines for an investigation?

[1015]

Is there anything being set out? One of the issues that has been raised is the timeliness of the complaints process. Is there anything that addresses that, which we need to be aware of?

Hon. M. de Jong: I think the first question he raised is an important one, and I do want to offer these remarks on the record. He is quite correct that under these provisions, there is a mandatory reporting requirement where either a death or serious harm has occurred to a person in the care or custody of a police organization, as defined and covered by the act.

I think that's important. I think that's appropriate, because the state owes that responsibility of employing reasonable force, reasonable techniques in the detention of citizens, including citizens who are under investigation for particular acts or allegations. So that is there.

It actually goes beyond the specific recommendation contained in the Wood report, which focused specifically and only on in-custody deaths occurring. This includes

the term and situations where there is "serious harm." I wanted to point out that that is slightly different than what was contained in the Wood report.

The member's second question relates to the timelines. There are specific provisions. I'm just going to take a moment to answer in more detail, referencing the sections that set out the speed with which and the period of time within which investigations must take place.

Section 10, in its lengthy provisions, includes the general requirement that an investigation be completed within six months. Now, I have to attach this caveat. There are also provisions that allow for an extension of that — where the Police Complaint Commissioner believes it is in the public interest to extend it, for example, where he or she becomes aware of new evidence that might be relevant.

There is that capacity, but it's a very hands-on process involving the Police Complaint Commissioner. I suspect it is a matter that falls within the exclusive jurisdiction of the Police Complaint Commissioner as opposed to a delegated power, but I'll check on that.

I was incorrect. It can be delegated by the Police Complaint Commissioner to someone within the office.
[1020]

M. Farnworth: Just to clarify, on the record: who would the delegated individual or authority be? What's anticipated in that? What rank or...?

Hon. M. de Jong: The expectation would be that would be to a deputy within the office — deputy complaints commissioner.

Section 10, section 76 approved.

On section 10, section 77.

M. Farnworth: Section 10, section 77 — this is division 2 — deals with misconduct. I'm going to read the bill.

The definition includes conduct that is a breach of public trust, an offence under an enactment of Canada — it's an offence to harass a complainant — an abuse of authority, using unnecessary force, using abusive or profane language, being an accessory to misconduct, damaging police property, engaging in a corrupt practice, bribery, theft, using law enforcement resources for non-duty-related functions, reckless damage, deceit, discourtesy, discreditable conduct, anything that would bring discredit to the municipal department, improper disclosure of information, improper off-duty conduct, improper use or care of firearms, being unfit for duty when on duty due to intoxication, accepting alcohol while in uniform, neglecting duty.

Engaging in conduct necessary for the proper performance of authorized police work cannot be considered a disciplinary breach of trust.

That's a fairly lengthy definition in terms of misconduct. Has that changed from previous legislation in this province? Has it been expanded, and if so, in what areas?

Hon. M. de Jong: The exhaustively listed items that appear now in the legislation are not substantially different, nor is the intention to expand the range of behaviour covered. I should point out, though, to the House that today that list appears in a regulation dealing with the code of professional conduct. As a result of this bill, that range of covered activities will appear in primary legislation.

Section 10, sections 77 and 78 approved.

On section 10, section 79.

M. Farnworth: Time limit for making complaints. "A complaint must be made within the 12-month period beginning on the date of the conduct giving rise to the complaint or within any extension of that period allowed under subsection (2). And "The police complaint commissioner may extend the time limit for making a complaint if the police complaint commissioner considers that there are good reasons for doing so and it is not contrary to the public interest."

[1025]

I just want to explore this a little bit and make sure how that is determined. For example, if it's after 12 months, does the commissioner have the ability to say that this should be investigated, that there is a complaint here? Is that what is meant by section (2)? Or do you have to make the complaint within 12 months, and then the ability of the commissioner to extend is in place?

Hon. M. de Jong: Here's how I understood the question. I think there is clear authority on the face of the section that says that if a citizen wishes to initiate a complaint and wishes to do that beyond the 12-month limitation period, the Police Complaint Commissioner has the authority to allow that on the basis of what he or she deems to be in the public interest.

I think the second part of the question, as I understood it, was recognizing that the Police Complaint Commissioner himself or herself has the authority to launch a complaint, and that is new within these provisions. Can he or she do so after the 12-month limitation period has expired? The answer to that question, I'm advised, is yes.

Section 10, section 79 approved.

On section 10, section 80.

M. Farnworth: Under this section, if a complaint is made to a member or designated individual under sec-

tion 78(2)(b), this section, basically, is just outlining the steps that they have to take. It's the starting of the process in terms of receiving the complaint. Is that correct?

Hon. M. de Jong: That's correct.

Section 10, sections 80 and 81 approved.

On section 10, section 82.

M. Farnworth: The determination of whether a complaint is admissible. Could the minister explain how it's anticipated that this section will work. What are the criteria, and what are the reasons that a complaint would not be admissible?

Hon. M. de Jong: We've just a few moments ago canvassed the section that speaks to the breadth of scope of behaviour that's covered.

[1030]

The section is important, and the term that's really important is an "admissible" complaint. Once a complaint has been deemed admissible — which the member can see means that the Police Complaint Commissioner says that it's not frivolous or vexatious; it's not about police policy per se — then that triggers a whole bunch of other things that need to happen pursuant to the act.

I do want to say this and make it clear: the fact that the complaint is admissible does not automatically mean that it is valid. It means that it is admissible and falls within the parameters of the act and, therefore, is subject to examination and investigation.

M. Farnworth: I think that's an important distinction. I want to make sure that what we have on the public record is that that admissibility is not an issue around validity. At the same time, one of the things that you often get is individuals who want to know why they can't make a complaint on something, and the reality is that it's often a policy issue, as opposed to a conduct issue. I think it's important to make that distinction, because that is a common sort of misconception, misunderstanding.

I want to make sure that we are clear that we're not dealing, for example, in the admissibility section with issues that are rightly a policy issue.

Hon. M. de Jong: I agree with the member and also want to point out that whereas in the past there may have been some question about what happened to a complaint that was not acted upon, even in a situation where the Police Complaint Commissioner determines a complaint to be frivolous and vexatious, the person registering that complaint will know that the commissioner has deemed it frivolous and vexatious.

Section 10, section 82 approved.

On section 10, section 83.

M. Farnworth: Section 83 deals with the notification following the determination of admissibility. The question becomes: are there any time constraints, or are there any time limits on which this is intended to take place?

Hon. M. de Jong: The act itself does not provide a specific limitation period, although I've just verified that because everything else is triggered by the determination of admissibility, the expectation would be that both that determination and the communication of that determination to complainants and members involved would take place quickly.

[1035]

M. Farnworth: The section also deals with issues around notification, as I read the section, on the subject of the complainant. It makes specific reference in sections (4) and (5).

"On being notified of an admissible complaint concerning a chief constable or a former chief constable of a municipal police department, the chair of the board of that municipal police department must, subject to subsection (5), notify that chief constable or former chief constable that a complaint has been made and specify the nature of the complaint and the name of the complainant."

Are there issues around confidentiality regarding the name of the complainant? Is the initial complainant...? Why is the requirement to have the complainant initially named, or is that a significant change from the way things are currently done?

Hon. M. de Jong: The general rule is, I think — as the member has pointed out — that the name of a complainant, upon which a complaint moves forward, is disclosed. The general rule is that the member — or in subsection (4), I think it's the chief constable — will be entitled to know the source of the complaint that has been registered against him or her, their conduct.

There is, of course, an alternate means by which a complaint can come forward. A citizen may choose to provide information to the commissioner and withhold their name, and the option for the commissioner would be to proceed with that complaint in their own name pursuant, I think, to section 93.

M. Farnworth: Then, under subsection (5): "The police complaint commissioner may direct the chair referred to in subsection (4) to postpone notifying the chief constable or former chief constable concerned until such time as the police complaint commissioner may direct. (6) The chair must comply with the police complaint commissioner's direction under subsection (5)."

Clearly, we're talking about what happens if... I'd like to know: under what circumstances are you not telling,

or will the complaint commissioner not tell, the chief constable that there is a complaint having been made?

Hon. M. de Jong: I think the circumstance that would immediately jump to mind is if there were any concerns around the preservation of evidence.

M. Farnworth: Then, following on that: "The chair must comply with the police complaint commissioner's direction under subsection (5)." The chair of the police board is different than the chief constable or the police officer.

[1040]

I guess we'd probably deal with it under penalties, but what are the consequences for the chair if they fail to abide by that instruction?

Hon. M. de Jong: Depending on the circumstances — we're, of course, dealing with examples here — it may attract attention under section 106, which is the offence section dealing with obstruction or interference.

M. Farnworth: I guess one of the questions that comes up and one of the problems with the legislation is that, as we go through this section by section by section, we're dealing with municipal police forces, the independent police forces in B.C. At the same time, we do have the other — the RCMP complaints process.

I know that they are two separate pieces of legislation, but at the same time, there also is the public policy debate around the need for a unified process in the province of B.C. The government has made statements around the issue in terms of... You know, we've got the RCMP contract coming up in 2012.

I don't want to confuse, and I don't want to mix the two. I know it's difficult to do that, and that's not what we're about. At the same time, I also think it's important to acknowledge that there is legitimate public concern about what changes we make in here and what potential changes we may be seeking under the RCMP complaint process.

I'd like, if possible, for the minister — in some of the sections, if there are areas that he thinks, or the government thinks, are suitable for being changed, being brought so that they are... I guess the point I'm trying to make is that we've got two different acts, this one and the one governing the RCMP. As much as possible, what I'd like — and this side of the House — is to see them becoming the same.

If there are some key areas in this that we are looking at, perhaps seeking changes at the federal level... If the minister could indicate that that was, in fact, taking place, or if that's something that they would like to see happen, it would be appreciated if they could let us know if there's not a problem around that.

Hon. M. de Jong: I think there is some general interest in unifying some of these complaints processes. The

member, I think, well knows that there has traditionally been reluctance on the part of the federal agency to subject their members to a provincially mandated process, but there is a desire to explore that in more detail and have those discussions.

I confess to being at a bit of a disadvantage, insofar as whatever area of expertise I enjoy, this may not be one of them. But I can offer this general comment — that there is recognition of the confusion that exists where there are two separate processes and a desire to try to resolve that. But of course that will require the ongoing discussions with the federal agency that the member refers to.

M. Farnworth: I thank the minister for those comments. It is just something we would like to get on the record.

[1045]

It is an important issue, and it is in many ways outside the scope of the bill. I do think the two are also, at the same time, linked. It's a question of finding the appropriate section where to make those comments.

I think we can move on to the next section.

Section 10, section 83 approved.

On section 10, section 84.

M. Farnworth: This section deals with the discontinuance and consolidation of complaints made by third-party complainants. I'd like to know: is there a difference between...? How is this section supposed to work with regard to third-party complainants? Does the section deal with people who may make multiple...? If you have two or three individuals making the same complaint, does this section also deal with them, or is this strictly dealing with individuals who are disinterested or not directly affected third parties?

Hon. M. de Jong: I think the focus here is on ensuring that there are not multiple investigations taking place of the same alleged conduct or alleged misconduct. The example was given earlier of YouTube. That may give rise to complaints from a variety of sources, but the subject matter of the complaint is the same. The section provides a means both to consolidate and move forward with one examination, one investigation, and then discontinue those others.

Again, I think it is fair to say that the act and the process will favour, in that scenario — I'm not sure "favour" is the right word, but I'll use it anyway — a complaint from an individual directly impacted by the alleged misconduct over an interested third party.

Section 10, section 84 approved.

On section 10, section 85.

M. Farnworth: Section 85 deals with "Departments to make record of reports not resulting in registered complaints." The interpretation of this section, then, is that even if a complaint is not acted on or deemed to be valid, a record must still be... This is ensuring that everything is kept and recorded, that there's not a question of: okay, because it's not deemed, it's then not recorded. Is that correct?

Hon. M. de Jong: That's correct.

Section 10, section 85 approved.

On section 10, section 86.

M. Farnworth: Section 86. It's an offence to "harass, coerce or intimidate anyone questioning or reporting police conduct or making a complaint." It seems very straightforward, and I think it is, no doubt, straightforward.

I just want to clarify. This applies to just police officers, or any individual other than a police officer?

[1050]

Hon. M. de Jong: It applies to anyone. They need not be a member of a police force. Further, I would emphasize that its presence in the act as a stand-alone offence section further emphasizes the seriousness with which the law — when this becomes law — will take anyone who in any way tries to frustrate the right of a citizen under this act to register a complaint about alleged misconduct.

M. Farnworth: Section 87 deals with the appointment of a representative for complainants. Could the minister just...?

The Chair: Member, we're on section 86.

Section 10, section 86 approved.

On section 10, section 87.

M. Farnworth: The appointment of a representative for complainants. Could the minister just outline how the government sees this section as working? Particularly, I'm interested in... Is this applying just to the appointment of a representative for someone who is under the age of 19, for example, or someone who may be incapacitated in some way, either mentally or physically?

Hon. M. de Jong: The provisions are essentially the same as what exists in section 66 of the existing act. The member has correctly identified at least two circumstances in which it would be appropriate to appoint a representative, broadly speaking, when it is determined or there is a concern that the complainant may not have the capacity to pursue the matter in their own right.

M. Farnworth: I know it's probably an unlikely situation, but I just want to ask anyway. Regarding a situation involving a minor, if an incident happens and a minor wants to make a complaint, but the parents are reluctant to pursue that complaint, would this situation come into play in that circumstance? What's the determining factor in how something like that is handled?

Hon. M. de Jong: Well, I'm not sure that the example the member has given is that fanciful. I can imagine that there might be circumstances where that will arise. The act contemplates it, and ultimately, the right of the young person to proceed is protected via the appointment of a representative.

Section 10, section 87 approved.

Hon. I. Black: I seek leave to make an introduction.

Leave granted.

Introductions by Members

Hon. I. Black: I noticed that we have some very bright and very well-behaved young faces in the gallery above. It is my understanding that they are from Cobble Hill Elementary, here with their teacher, Hayley Henderson. Cobble Hill is where my father makes his home. You live in a beautiful part of our province. I want the House to join me in making them feel most welcome.

Debate Continued

On section 10, section 88.

M. Farnworth: Section 88 deals with the duty to preserve evidence relating to the complaint or to the report. It allows the.... Again, in essence, this section is like the preceding section that we dealt with whereby in the preceding section the complaint was made against the chief constable. This section deals more with if the complaint is against someone who is not the chief constable but is a regular member, and it's the same issue around notification or not to notify.

[1055]

In this particular case it is up to the chief constable to determine when and how to notify the member that a complaint has been made and whether or not to inform if one of the issues is the preservation of evidence. So in that sense, this clause is similar to the previous clause we dealt with around the chief constable. Is that correct?

Hon. M. de Jong: It's a little different than the previous sections, and it is new because it imposes a positive obligation on the part of the chief constable. I would say

that the essence of the section relates to the preservation of evidence.

So the focus is there. It provides some discretionary authority in terms of notice requirements, but the essence of the section is preservation of evidence, and it imposes that positive obligation on the part of the chief constable to act to take the reasonable steps necessary to ensure evidence is preserved that might be relevant.

M. Farnworth: Is there a requirement for the chief constable to inform the Police Complaint Commissioner of his or her decision in terms of notification or to delay notification in terms of the issue around protecting evidence?

Hon. M. de Jong: I think I understand the member's question. I just wanted to be sure I was answering correctly. There is an obligation on the Police Complaint Commissioner to notify the chief constable, and then the chief constable has the obligation to notify the member whose conduct is the subject of the complaint.

[1100]

But in fulfilling his or her obligations under section 88, the chief constable has an option to delay notifying the member. There's no positive obligation on the part of the chief constable in every instance to notify the Police Complaint Commissioner that he or she has exercised that option to delay notice. The obligation that exists is to take reasonable steps to preserve evidence.

At some point during the course of the investigative process, the Police Complaint Commissioner, upon reviewing that, would become aware of the fact that there had been a delay or no delay in notifying the member, but that wouldn't always be apparent at the outset.

My suspicion, from a practical point of view, is that the Police Complaint Commissioner and the chief constable would have some discussion about what was to follow, but there's no enumerated obligation on the part of the chief constable to provide written notice to the Police Complaint Commissioner that says: "I have chosen not to notify my member for the period of 48 hours, pursuant to section 88."

M. Farnworth: I just want us to be clear, because I do think that has the potential to be a bit of an issue in the sense that.... If the Police Complaint Commissioner makes notification to the chief constable and then that discretion on whether or not to notify or when to notify that a complaint has been made....

If an issue is around the concern of evidence, certainly, I would want the Police Complaint Commissioner to be notified that, in fact: "There is going to be a delay, because we do have some issues around evidence that we want to make sure are prepared."

I do think that if we're to go by the spirit of what's intended in this legislation, the Police Complaint

Commissioner would be notified that yes, there is this issue so that they're aware of it if, subsequently, down the road — in his or her pursuit of the investigation — there are questions that arise. They in fact know why certain things were done or certain things were not done around the issue of notification with regard to the preservation of evidence.

Hon. M. de Jong: I appreciate the member's concern and the issue that has been raised. It would, I am virtually certain, form a part of the record that statutorily must be kept, chronicling the stages of the investigation.

[L. Reid in the chair.]

There would certainly be the ability post-fact to look back and know when that notification took place. If it took place immediately, why; if it took place three or four days later, why that took place and why that was necessary. There will be a record of it.

Section 10, section 88 approved.

On section 10, section 89.

M. Farnworth: Section 10, subsection 89, mandatory external investigation of death serious death or subsequent harm. I think this is one of those sections where there has been considerable public interest, third-party interest and public debate, over the investigation of death and serious harm — not the mandatory but rather who, in fact, does the investigation.

I think I'd appreciate some comment, if the minister has any, on that issue of who would be doing the external investigation. As I know, there has considerable — it's about to increase — civilian oversight or further civilian involvement in the external investigation of deaths and serious injury. I know that the police chiefs have made comments that there has been.... They would like to see a different system in place.

[1105]

There has also been the issue of looking to a model similar to what they have in Ontario, where you have a civilian body that actually does do the investigation. I know that that's not contemplated within this particular piece of legislation, but I think this is an appropriate section to actually raise that issue and just ask for the minister's thoughts, particularly around the Ontario model. Was there any thought given to looking at something like that as opposed to what we're proposing in this piece of legislation?

Hon. M. de Jong: The section is important, of course, because it speaks to the most serious of circumstances: either a death or a serious injury. We are dealing with the administrative processes around complaints as opposed

to the determination around criminal proceedings, but I will offer this observation.

The decision-making authority around this vests entirely within the Police Complaint Commissioner. That person is a civilian. That person also, pursuant to these provisions, will have the option of appointing whomever he or she wishes.

Now, I think that historically the member is correct. It has tended to be, when we talk about external agencies, external police forces. That is not required under this section. So you would have, even for the purposes of the administrative review, a civilian with absolute authority to appoint someone that could be a civilian — it's not mandatory here, but could be a civilian — to undertake that review.

M. Farnworth: I appreciate the minister's comments, and I think that it is an important change. But as I said in my second reading comments, one of my concerns around this particular piece of legislation is that events in many ways have moved beyond this, and there'll be....

I'm thinking of the Frank Paul inquiry and also, subsequently, the Dziekanski inquiry, when its report and submissions come out. At that time, it may well contain recommendations upon which there is a large public interest to see those recommendations adopted. Now, that inquiry clearly deals with the RCMP, but the Frank Paul case also dealt with municipal forces, which are captured by this act.

I guess the point I want to make is that I think, at some point in the future, we will again be back to this legislation, making changes, and this may well be one of those sections.

[1110]

In fact, I think it will be a key section where there's a lot of focus in terms of either moving to a model such as they have in Ontario or strengthening and making a dramatically stronger civilian presence in terms of how investigations are done.

But at the current time, when we pass this particular piece of legislation, it will allow for an important change. It's that even though, historically, investigations have been done by police investigating themselves, the Police Complaint Commissioner will have the ability to have an individual or individuals do an investigation, and they could well be civilians in nature. So that is a significant change from what we've had in the past.

Section 10, section 89 approved.

On section 10, section 90.

M. Farnworth: If the complaint is not resolved informally, investigation must be initiated, and I just want a clarification. Are there any differences between

how this section is intended to operate as opposed to how we currently deal with the issue of resolving informally as opposed to a formal investigation? Or is it basically the same as what the current standard practice is?

Hon. M. de Jong: Broadly speaking, I think the intention is the same. The terminology is a bit different. I think the existing act — I've just been presented with a copy — utilizes terms like "summarily dismissed."

The objective here is to contemplate the possibility that an informal resolution can take place. Sometimes maybe it's just an apology. Who knows? But where that doesn't occur and where it is an admissible complaint, all of the requirements are therefore triggered, and we are into a more formal process.

I think the recommendations.... Mr. Wood and the Police Complaint Commissioner and I think all members in the government are concerned that situations not develop where people or complaints fall through the cracks. If they're admissible, they are either resolved informally or they are subject to the more formalized process.

Section 10, sections 90 and 91 approved.

On section 10, section 92.

M. Farnworth: Section 92 deals with external investigations when in the public interest. My understanding is that this is an expansion of the powers of the commissioner, and I would be interested in the minister's comments as to the scope and anticipated circumstances upon which this particular section would come into play.

Hon. M. de Jong: I am going to thoughtfully consider, as I always do, the member's question. While I am doing that, I am going to give to him — and table with the committee — an amendment which is the addition of a subsection (6), and he'll have a chance to look at that while I address his question.

[SECTION 10, in the proposed section 92, by adding the following subsection:

- (6) In making an appointment under subsection (1) (b) or subsection (3) (b), the minister must consider the recommendations, if any, of the police complaint commissioner.]

The Chair: The House stands recessed for five minutes.

The committee recessed from 11:15 a.m. to 11:20 a.m.

[L. Reid in the chair.]

On the amendment.

Hon. M. de Jong: I think the essence of this section, and it is new to this extent, is that the Police Complaint

Commissioner is vested with the authority, really, to step in at any stage of the process — at the outset, which would be perhaps the most logical time and the standard situation, but even in the midst of an investigation — and say, "No, actually, I think this requires an external examination," and make that determination. I think the chief constable has that option as well, but that is a new directive power that is created and embedded in the statute.

Then, with respect to the proposed amendment, which would create a new subsection 6, the requirement that was included in other sections and overlooked here was that whilst the mechanism for the appointment is the ministerial appointment, there needs to be a direct link which says that the minister must take into account the recommendation of the Police Complaint Commissioner, since that is what triggers the appointment in the first place.

Subsection 6 does not appear presently. That is an oversight and should be included to close the circle on how this section operates.

M. Farnworth: I just want to make sure we're clear on this. As I understand it, if the Police Complaint Commissioner orders an external investigation, then what is the role of the minister in that?

Hon. M. de Jong: Pursuant to 92(1)(b), the person appointed actually is a special constable. The mechanism for doing that exists under the Police Act, and it is the minister that appoints the special constable who is then eligible to sit pursuant to the appointment of the Police Complaint Commissioner.

M. Farnworth: So with this amendment.... This corrects an oversight, but at the same time, the effect, then, is that the Police Complaint Commissioner.... If they propose the name of an individual, then the minister must consider that but isn't bound to appoint that individual. Is that correct?

Hon. M. de Jong: I think I have the member's point. The safeguard is this: it is the Police Complaint Commissioner that assigns the task of the investigation. The minister's role.... Because of how the two acts operate or this act operates, to be eligible to fulfil that function the individual must be designated a special constable. It is the minister that appoints the special constable, but it is the Police Complaint Commissioner that provides the assignment to investigate the matter under this act.

M. Farnworth: One final question on this particular section. In essence, then, what we're saying with this section.... Not only does the Police Complaint Commissioner have the ability and the power to order an external investigation if they believe it's in the public

interest, but so does the chief constable have that ability. Whereas if it's a....

[1125]

In section 90 what we're dealing with is: if there's a death or serious injury, that automatically takes place even in relation, then, to other incidents within the force. Say, for example, drinking and driving as we saw in West Vancouver — those allegations that were made there — or in another police department. The chief constable can go, as can the Police Complaint Commissioner, to an external agency, external force or external investigator to look into the complaint. That's correct?

Hon. M. de Jong: I'll be careful about pointing to real-life examples, but the essence of what the member has described is correct.

Amendment approved.

Section 10, section 92 as amended approved.

On section 10, section 93.

M. Farnworth: Again, I think this is another important section: the independent power to order investigation, whether or not a complaint has been made, so that if there is.... For example, it comes to the attention of the Police Complaint Commissioner that an incident has occurred.

I guess the obvious way these days is YouTube. It seems, you know, that something appears, and there's not a direct complainant, but the complaint commissioner has the ability to order an investigation.

I just would like the minister to clarify if that's how they see the government.... Is that how they see the section working? Are there any other circumstances under which they see this section being applied? I think the obvious one is YouTube or a reluctance of people to come forward and make a complaint.

Hon. M. de Jong: That is one circumstance. The other is one we canvassed previously, where an individual may come forward but not wish their name attached to the complaint so would provide the information to the Police Complaint Commissioner and have the matter go forward.

Depending on the circumstances, that may or may not be problematic, because most complaints, at some point along the way, rely on a body of evidence. So if the citizen coming forward was directly involved but wishes to remain anonymous, at some point they may have evidence that, in order to be properly investigated, would need to be provided to the individual conducting that investigation.

Those are the two circumstances, generally speaking: the one the member mentioned and a situation where the Police Complaint Commissioner receives informa-

tion anonymously, perhaps, and then decides on his or her own volition that this needs to be pursued.

M. Farnworth: It may well be that once an investigation has started and it becomes public knowledge, in fact, more information then starts to come as people know, "Oh, okay. Something is actually underway," and they have something that they believe is important to contribute in the way of evidence or knowledge.

Again, I think, this is an important expansion of the role of the Police Complaint Commissioner. It's one that I hope doesn't have to be used that often, but the fact that it's there and able to, I think, is a positive improvement.

Section 10, section 93 approved.

On section 10, section 94.

M. Farnworth: I'd just like the minister to state whether or not there are any significant changes in this section as compared to the previous section and as to the way in which this issue is currently dealt with.

[1130]

Hon. M. de Jong: The practical effect may be the same, but the power, actually, that's specifically created here is new. It says that whilst a complainant may file a complaint and then subsequently choose to withdraw that complaint — and that individual would lose their status as a complainant — the Police Complaint Commissioner is not bound to discontinue the process and may, in fact, choose to carry on with the process. So that vests statutorily in the commissioner a power that I don't believe existed or exists under the present act.

M. Farnworth: So this section, then, deals with and would also apply to members who have left a force after a complaint has been made.

Hon. M. de Jong: Yeah. The act, I think, is pretty clear about who is subject to these provisions. It's members and former members. That obviously is different than is presently the case.

Section 10, sections 94 and 95 approved.

On section 10, section 96.

M. Farnworth: "Police complaint commissioner entitled to observe investigations." I think, again, that this is another important change in the sense that this allows, as the minister pointed out in second reading debate, the contemporaneous observation and investigation to take place at the same time as the complaint is being done.

Can the minister just outline how the minister sees this particular section working and in what way, how

it is going to be different from what is undertaken at the current time and, I guess, in terms of improving the complaints process, how this is going to function.

[1135]

Hon. M. de Jong: In this case, the authority we're discussing does presently exist. I must confess that I can't relate with certainty the practical means by which that power has been acted upon. As we move to section 97, we will see how that monitoring process is contemplated statutorily, so the member may have more questions relating to the practical implications of this section when we get to the next section, 97.

Section 10, section 96 approved.

On section 10, section 97.

M. Farnworth: If this is the section that more appropriately deals with the preceding question, then I would be quite pleased for the minister to make those comments around this particular section at this particular point.

Hon. M. de Jong: There were really two actions contemplated here. Under 96 is the ability to observe, which, I am advised, to that limited extent is somewhat of a passive authority to sit in on the proceedings and observe what is taking place.

The power to act and make recommendations and provide advice is contained in section 97. That power exists even where the decision hasn't been made to appoint an observer. The powers contained in section 97 exist with respect to any investigation.

M. Farnworth: So the power that is anticipated with this section is that even if the complaint commissioner chooses not to appoint an observer, they are able to... In essence, what they are is almost *ex officio*, then — able to sit in, see what's going on — even if they're not exercising the power to appoint somebody else to be able to do that particular function.

Hon. M. de Jong: I think the member has described it correctly. This creates a statutory standing for the commissioner from the outset of the investigation.

Section 10, section 97 approved.

On section 10, section 98.

M. Farnworth: This section is pretty straightforward, "Investigating officer's duty to file reports." I want to make sure and confirm that there's really no difference between this section and what the current practice is — if that's correct.

[1140]

Hon. M. de Jong: They are essentially the same. I note that we have moved from setting timelines in terms of days to business days.

Section 10, section 98 approved.

On section 10, section 99.

M. Farnworth: This section anticipates investigations to be completed in six months. Again, how is that different from a current practice? I guess in terms of saying that an investigation will be completed in six months.... One, I think, that we're trying to send.... Two, we're sending a clear message that the issue of timeliness is an important component of this bill.

I think that was one that has been a complaint in the past. But if that is the case, then what we're also saying with this is that if the investigation is to be completed within six months, we're looking to make sure we have the adequate resources in place to be able to make sure that that, in fact, does happen.

Hon. M. de Jong: The provisions are essentially the same. I note for the member's benefit that under the existing provisions in section 56(8).... That section has been deleted from the proceedings because the language was deemed to be ambiguous as to when a final investigation report was completed.

We'll come to what replaces that when we get to section 112, I believe, but other than that, the six-month period certainly exists in both cases, and I think that the member in his question identified, really, the three circumstances in which the Police Complaints Commissioner is authorized to grant an extension of that time period.

Section 10, section 99 approved.

On section 10, section 100.

M. Farnworth: I note that section 100 is a fairly lengthy section — "Investigation powers in relation to municipal police departments" — spelling out powers in relation to municipal police departments and how things can and cannot be done, for example, whether inspecting the premises and anything on the premises.

Is there anything new in this particular section? Has there been any expansion, as opposed to in previous legislation with regard to the powers of the Police Complaints Commissioner?

Hon. M. de Jong: Two things. Much of this is new, and it relates to specific recommendations from Mr. Justice Wood.

I think the best way to characterize this and the test around whether or not this is appropriate relates to

the balance — on the one hand, ensuring that investigators have the means to acquire the evidentiary base they need to properly conduct an investigation, versus the reality that when you're at a police station you are in a unique environment where there is an abundance of sensitive material and evidence pertaining to a whole host of other ongoing investigations.

So the recommendation provided by Mr. Justice Wood to provide some tools by which, even to the extent of obtaining a court order, that material can be gathered — but at the same time recognizing that there need to be protections in place that ensure that the secure and sensitive material that is housed at a police station remains secure — is what is trying to be achieved here.

[1145]

M. Farnworth: So if I understand the minister's comments correctly then, this section is anticipating not only how investigation is to take place but in terms of dealing with a complaint that may involve ongoing or other investigations that are also taking place and the evidence and information that may be used within the investigation of the complaint and ensuring the integrity of that. Is that what I'm hearing the minister say?

Hon. M. de Jong: Yes — the need to ensure that there is a balance here. The other point I want to emphasize is that the power that's created here to access this material is vested in the investigating officer. It's not a new power available to even the complainants themselves, let alone third-party citizens with an interest.

M. Farnworth: That's, I think, a key point. I'm not talking about a third party or the complainant, but just in terms of how the investigating officer is doing the investigation and how, in the course of that investigation, they are, then, obviously made aware of or come into contact with evidence in relation to other issues and other cases that are being investigated independently of the complaint process. If that's my understanding, the minister can confirm that.

Hon. M. de Jong: Let's hope I understood the member's question correctly, because I've taken some time to canvass it with the staff. I think the hon. member was describing a situation in which an investigating officer was utilizing their authority, conducting the investigation, examining evidence — may or may not have got a court order to do so — and comes across something perhaps completely unrelated to the complaint that the investigating officer is investigating but that nonetheless smacks of being a contravention of an act, the Criminal Code.

There's nothing specific in this section that deals with that provision. We come later to a related provision, I think 111 or 112. But in the example I've just tried to

relate, which I think lies at the heart of the member's question, the professional obligation on the part of the investigating officer to report that to police, depending on what it is....

[1150]

It may not be the same police department within which he is working on the complaint investigation, but the professional obligation to alert an investigating authority, the police, of that information would obviously continue to exist. That's how that would give birth, I suppose, to an entirely unrelated subsequent investigation.

M. Farnworth: The bottom line is that this is a very.... In essence, this gives a wide-ranging, very thorough ability to conduct an investigation. The investigating officer has the ability to look into, basically, any aspect of the complaint that they feel necessary. They have the ability to see records, to look at anything they wish in the course of their investigation with as little as possible or no hindrance.

When I read this section, that is my interpretation of it, and I'd just look for the minister to confirm that.

Hon. M. de Jong: The objective has been to try and ensure that the tools exist that give the investigating officer and, ultimately, the Police Complaint Commissioner the tools they need to reasonably pursue investigations that derive from complaints that are registered.

Section 10, section 100 approved.

M. Farnworth: Hon. Chair, I was going to, noting the hour, move that the committee rise and report progress and ask leave to sit again.

Motion approved.

The committee rose at 11:52 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.

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

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

Motion approved.

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

The House adjourned at 11:53 a.m.

**PROCEEDINGS IN THE
DOUGLAS FIR ROOM**

Committee of Supply

ESTIMATES: MINISTRY OF
HOUSING AND SOCIAL DEVELOPMENT
(*continued*)

The House in Committee of Supply (Section A); H. Bloy in the chair.

The committee met at 10:07 a.m.

On Vote 36: ministry operations, \$2,714,603,000 (*continued*).

Hon. R. Coleman: Before I start, I'll add some more staff to the introductions for all members. I should probably introduce them all to the member opposite, who was here to introduce three of them yesterday.

To my left is the president and CEO of Community Living B.C. Behind him is Carol Goozh, who is the vice-president of policy and program development. To my right is Cairine MacDonald, the deputy minister of the ministry. Behind me is Sharon Moysey, who is the ADM in charge of finance and da-da-da, as they all have many jobs they do together. And of course — don't tell me — Molly Harrington, who is the ADM. Molly takes care of legislation and policy and watches over a number of other shops.

All of them are here. As I walked in today, I said: "There are five of you. I guess you have a minister that needs a lot of help." But that's just a joke, hon. Member.

They're great people. They're very capable, and I'm sure that any questions I can't answer, they will quickly put their fingers on the information so that I can answer your questions.

S. Simpson: It's good to be back, and welcome to the new staff who've joined us.

I want to open this morning with some questions related to Community Living and that aspect of the ministry. Could the minister tell us what the current status is of the transfer of services for children and youth under Community Living over to MCFD?

Hon. R. Coleman: Yes, I can. It is to take place in the next month or so. There's been work done by both Community Living and the Ministry of Children and Families with regards to the recommendation made by, I believe, the Representative for Children and Youth that we might consider doing this.

[1010]

Much of the planning for the transfer has been successfully completed. Contract and payment transfers

have already been implemented. The staff pre-referencing process concluded on October 22. The MCFD, the Ministry of Housing and Social Development and CLBC are ready to proceed to implement the transfer and all remaining service components by October 31.

All parties, recognizing the increasing visibility at this stage of the transfer process, expect the transfer process is going to be a reality. Implementation and operational details are continuously addressed and managed, and they're committed to making sure there's a seamless transition for both the children and youth and the operations of CLBC.

S. Simpson: The budget that's identified in the service plan for Community Living, \$668 million — is that inclusive of the money or the resources that will be transferred over to MCFD? If so, what is the portion that will be transferred?

Hon. R. Coleman: The budget that you have for CLBC is the budget for the adult developmentally disabled for Community Living B.C. The budget for the youth and children has always been with Children and Families. They basically contracted with CLBC for the services, and so that was over and above the budget for CLBC.

S. Simpson: That being the case, then is it...? Maybe these are questions that should be in MCFD, but I'll try it out and see whether Community Living can tell us through the minister. Are we essentially maintaining...? There is no change in terms of budget levels for the services that have been delivered through Housing and Social Development that are now moving over in terms of....

The minister talked about a seamless transfer, I believe. We're not seeing any change on the ground in terms of services. The change is at the governance level?

Hon. R. Coleman: The short answer to that question is yes. There's no change to the budget with the children's side — back with MCFD. Obviously, there are some folks that will move one way or the other, because they've been working for us. We'll now do some contract management for them versus having been with CLBC. But there's no change in services and no change in budget that's affected by this change.

S. Simpson: Then the total number of FTEs who are delivering these services on the youth side — that will essentially stay the same? We will see no changes there. That's as well as budget? I mean, some individuals might change, but there's no change in the service level. Would that be accurate?

Hon. R. Coleman: On the FTE side, a bit different measurement, I suppose, because people come and go

and what have you — but no change on the service side.

S. Simpson: Do these changes have any impact? What's the impact of these changes, if any, on the adult services that will continue to remain with the ministry?

Hon. R. Coleman: There are no changes there at all. I mean, the adult services are there. Additional money was put in this year to take care of wait-lists, as I mentioned in the short discussion yesterday, as well as the additional funds for the change in IQ.

We've worked out with Children and Families how we will make sure that the information management systems and sharing of information will be there so that we have a seamless transition of a young person to age 19.

There are a couple of stages in there that we've set up, which we think are important in order for us to be ready and to handle their need for services, etc., as they come through the system so that the youth is identified early on. We'll know at what stage they would be coming to us at 19, so that we would be in a position to have the services ready for the transition for that individual.

[1015]

S. Simpson: Could the minister tell us: with CLBC generally, how many FTEs are assigned to CLBC?

Hon. R. Coleman: After the transfer, CLBC will have 272 FTEs.

S. Simpson: Generally — and I'll acknowledge this is not the area of the ministry that I know best — could the minister tell us a little bit about...? I know that much of what CLBC does is work in relation with contracted services who deliver those services on behalf of the ministry and on behalf of British Columbia, and that CLBC provides support and resources for that.

Could the minister tell us generally: what are the key service delivery areas for CLBC out of its staff — those 272-odd folks?

Hon. R. Coleman: There are 5,278 adults supported by Community Living B.C. that are living in group homes, in home-sharing arrangements or semi-independently. Some 2,407 of those are in staffed residential resources, and 2,871 are in home-shared living or supportive living arrangements.

Community Living B.C. supports adults with developmental disabilities to live as independently as possible within the community. That's the main goal of the corporation. People with these types of developmental disabilities have the right to choose where they live and what programs....

We basically work with the families and try and set up what works, so we have a variety of options available

to them. There are five basic options for housing that are available, which can be customized according to the needs and preferences of the individual.

Today about 93.9 percent of the services we deliver are in contracts with groups like community services or community living organizations within communities across B.C.

S. Simpson: Could the minister tell us what the wait-list numbers are like to get into CLBC services, in terms of raw numbers on wait-lists that we have, and what the expected time of these waits will be?

Hon. R. Coleman: There are two types of wait-lists with regards to services at Community Living B.C.

There's the first piece, which are people that have no services and are waiting for some services. And there are people that have services who are now requesting additional services which require a review to see whether they actually need them or whatever the case may be. That's an ongoing rolling relationship with CLBC with regards to that list. I'll give you both numbers.

Basically, we maintain a wait-list of people waiting for services and a planning registry for those who are requesting or requiring services at a future date. So we actually keep these rolling lists.

[1020]

We think some people may need additional services five years from now, so we try to keep that in our information and data mindset, as well as what people are requesting today, saying they want additional respite where they may not need it, but they're requesting it.

So that's a request, and that goes onto a list to be reviewed. That would be considered part of the wait-list which we talked about. We have 1,072 people waiting for additional or new services that they've requested or we're looking at. That's a rolling number. We do them, and then some people come off the services they have, and other ones come on because they need a different service. It really depends on the individual.

There are about 595 who were not receiving support of any kind in January of this year. That additional budget lift — its first priority is to provide services to all of those folks so that they're all receiving a level of service that's compatible with their needs. So we're working to get that wait-list down to zero. That's what the budget lift is for, for Community Living B.C.

Also, what we do on a regular basis is... With the advocate or the person dealing with each individual and family, we try to find what other services or improved services — or change of services, in some cases — people are requesting. They're on that other list of 1,000-plus. But it could be somebody asking for a change from a group home of four to a residential relationship at a different location because the family has moved or that sort of thing.

Those are all on a list for different services, but they're all part of the list that we maintain. For those that were not receiving services — about 595 individuals — those individuals are being worked on to get them off the wait-list as we build services for them in the budget lift that we have for this fiscal year.

S. Simpson: Then we have a list. If we combine those two lists, which I understand are different, then we have over 1,600 people who are on some form of wait-list for services?

Hon. R. Coleman: Yeah, and that was as of January 31. The one list will go up and down and change, but it's not that they're on a wait-list for services. They have services. They actually have some services, but from time to time they'll request additional services.

At that point Community Living B.C., through its staff, has to look at the individual and what services are being requested and whether they're actually something that they qualify for. But they do go on a list for additional services, because we treat each individual as an individual with regards to their needs.

So you shouldn't couch that there's a wait-list of that number, because all of those people get services from Community Living B.C. It's a question of whether they can enhance the services, change the services or move to a different location. They're on a list. In some cases, like I said a second ago, it could be somebody in a group home in Richmond, and the family is moving to the Okanagan. They would go on a list for an available bed as soon as one would be available, on a wait-list, so that they could be there with the family or whatever the case may be.

That's a pretty rudimentary example, but it is one of the types of examples we're talking about. In some cases it's just from one community in the Lower Mainland to another. In some cases it could be from the size of a facility to a smaller facility, if they have someone they're compatible with who has moved in there — those sorts of things. Each one of them is different.

On the other side we had identified for government that there were 595 in January on an absolute wait-list for services. That's what the additional budget lift was for — to be able to get those people the services to start with. We continue to work with anybody that has asked for additional services — to identify.

This month we could maybe accommodate 100 people by changing home or location or service or whatever the case may be. Then we could have a request from people already receiving services — another 80 to 100 people — who say: "We'd like to change our services too." This is what we would recommend or someone has recommended to us. That's an ongoing working relationship with the families and the individuals and the advocates to try and achieve that for each individual, to get the optimum service for the individual.

S. Simpson: The 1,072 that, as I understand, is a moving list — are these people who have requested an additional service? Are these people who have asked?

[1025]

Are they people who have asked, and CLBC has said: "Yes, we agree with you that this change of service makes sense from CLBC's point of view, and we're going to accommodate that as soon as we can. We agree with it, and we'll move ahead"? Or is it people who have simply made an ask and not had that assessment done yet?

Hon. R. Coleman: Your first description is pretty close. It's people that have asked, and we're accommodating. We try to add the services to them as we can build the capacity for the individual.

Like I said, each individual that has developmental disabilities is an individual who has individual service needs. As they age or as they come into the system and are given the services from CLBC, then we sometimes identify, through people in the field who say to us that this individual or their family could really use a bit more respite. They would then come in as an ask, and we would deal with it.

We're rolling over that 1,000 or so on a regular basis through our staff to identify and supply services, but then somebody else will come in with another request and be added to the list. So it's not like somebody is sitting on there for two years necessarily waiting for a service. We do maintain that list of people who have requested additional services so that we know how we're doing on the turnover, the target and the delivery for those individuals.

S. Simpson: Is there a third list of sorts — a list that says these are people who have made a request, but CLBC has not yet completed the assessment to determine whether that request can be accommodated?

Hon. R. Coleman: I want to be very clear here. These thousand-some-odd folks — not one of them has any need for the basic health and safety services. Those are all provided to all thousand-plus of those people. But they do make requests from time to time for additional services.

Then we do a process — and they're all on the same list — that basically looks at reviewing everyone on the list on a regular basis to see what their requests are and see whether the clinician or the advice from our staff or professional analysis is such that they should get those services or they need them.

Once that process is done, on the list we track them for the additional services. Those services are then provided as they become available, but none of these are health and safety issue lists. It could be an additional request for another day of respite, for instance, or something along those lines.

The issue is then: "All right, we now think it's fair to give these folks another day of respite." When you make that decision, then you say: "When we have respite capacity, these folks should get it." But they stay on the list and get monitored till they get the service. That's what we do.

[N. Letnick in the chair.]

We do the review of everyone on the list on a regular basis to know where they're at, what their timing is and what services they may or may not require.

There are times when we will look at it and say, "Actually, no, those services aren't required for that particular individual" — based on the professional advice we get from clinicians or whatever the case may be. We would say: "No, actually for this, your level of service today is where it should be." That will happen from time to time as well.

[1030]

S. Simpson: I appreciate that. My understanding is that the list, the 1,072 or whatever, is of people who are receiving services and have asked for some change in their service. Then you've got another 595 people who haven't got there yet, and we'll talk about that in a minute.

But going back to the 1,072. My sense of that number, if I'm correct from what the minister is saying, is that those are folks who have been assessed by CLBC. There's been a determination that this request for some adjustment in their services is a legitimate request and that that adjustment should be accommodated as soon as this can be done.

I assume, then, that there is a list of people who have an ask in — that CLBC has not yet completed that assessment to determine whether they should be on that rolling list of a thousand or so people that it is today, folks who still are in the queue to be assessed as to whether this is a reasonable request in terms of service requirements. Is there a list there of people who say, "I want service," and who CLBC has to assess?

Hon. R. Coleman: I think we're dealing with the same question but in a different way. There's a process for someone who requests services from CLBC at day one. There's an assessment made, and services are delivered. That's what all our clients get, including the people that may be on a list for additional services. So health and safety and the basic, fundamental services are provided.

Then we have another list of people that would be in process for additional services, who are processing on the basis.... They're all on the same list. On that list there could be someone that's requested today for additional respite services. That triggers a process of assessment by the people who are dealing with the individual and family to determine whether that request should go forward. There could be a yes or there could be a no, depending on the advice that we get.

Then, when they're identified with getting the services.... That person, if there was no need for the services, would drop off that list. If they should, they stay on the list. Then it would be a case of: where is our capacity to add additional services for this client, and what other thing do we do in that same community to enhance the services so that we can accommodate additional services for this client with all of our other clients in an individual community?

At the same time, not on a wait-list but in a planning registry at CLBC is every client. What happens is that we may have a client who has a severe developmental disability who today can function in a group home, but we might recognize that in a few years from now, in our planning for this individual, working with the professionals, there may be a deterioration of health because of health circumstances on top of the developmental disability that would let us think that within a three- to five-year period they would need additional services.

We have that planning registry that we maintain for every individual that we have to try and track the future as well as the present. Now, those trackings are done because we want to make sure we have the services available for those folks when they need them in the future. It's not something you put in today's fiscal plan, but the overall fiscal plan allows us to manage that and identify the management of the individual in the future.

So there are, basically, three things. There were folks that weren't getting any services, who were on a wait-list. We've funded that to deal with those wait-lists, and they're all in process to come off the list and get services. Then there's everybody else that is receiving their basic health and safety and additional services, whether it be respite or in-home care or meals preparation, group homes — all of that stuff.

[1035]

Then, as that evolves, individuals evolve to sometimes needing additional services. When that happens, they go on this list. They get assessed, and when the assessment is done, then we work on delivering those services as soon as we possibly can, depending on the services available in the community. Sometimes we have to build additional services around them to accomplish that.

S. Simpson: With the number — and we'll get to the 595 in a second.... With the 1,072 people who are currently receiving a level of service, there has been an assessment that the service should be adjusted, increased, changed — whatever. What's the range of wait times? I know it's not a fixed time for how long somebody might be, from the time they get on the list to the time that the changed services are delivered.

What's the range of time that they would be on that list before they get from "I need the service" to "I'm receiving the changed service"?

Hon. R. Coleman: The member is right. Each individual is different. There isn't an empirical number where you could say that the wait-list at CLBC for services is X months. It depends on urgency. It depends on family environment. It depends on the need for the service over and above the health and safety and the services that the individual is already getting. Then it also can be affected by what services are immediately available in a community, which may have to be developed to meet that need.

If I give you a quick example.... Let's say there's a person living with mom and dad in a residential setting. The parents have identified that at some point in time, because they're aging, their son will need to move into a shared group home or a home-sharing situation.

They would be on the list today to make that request, but in actual fact, they're also telling us that there's no urgency. "We're okay right now. We're healthy. We're okay. The services we have here are working at home. They're fine. But if something were to happen to either one of us, we'd like to know that there's a place for him to go."

We put that request on the list, and we would offer up the opportunity anytime during the period of time that they were okay to handle it at home, even before something would happen to one of the individuals, because they've identified that as a request. So that could be a longer thing.

It could be a situation, however, where an individual who has a developmental disability and suffers a lot of seizures could be suffering seizures on a more regular basis. The challenge is that the level of care needs to be changed from the home to a setting with more clinical support. Or it could be that the stress.... The family, although they want to keep the individual home with the services that we provide for health and safety, needs some enhanced services in the home, or they need more respite because of the pressure that it is on families.

In these situations it would be very stressful for families. On that one you would say that we need to move quicker because this is an immediate, urgent need for the individual.

We have those numbers of thousands of clients at CLBC. Each one of them is actually their own microcosm of services, because no individual with developmental disabilities is the same, and their health issues can change. So we have to be able to be adaptable to meet the needs as quickly as possible on some and also recognize that some of the folks....

Some of the services that people are requesting are some that are not an urgent need because the health and safety and all of those issues are taken care of. So this is an enhancement to services versus one that comes up where it's very urgent that we do something because of a change in health or issues in and around that.

S. Simpson: I'll ask this question in a slightly different way. Does CLBC have a performance objective in their service plan? Do they have a performance objective that says: "When somebody comes forward for that kind of a request for a change of service and makes that ask, it's our objective to try to complete that file, whether that means we've assessed and determined that that change isn't appropriate or we've assessed and determined that it is, and we've delivered whatever that change is"?

Is there a performance objective for CLBC to accomplish that within some period of time, or is there anything around that? Is it being met?

Hon. R. Coleman: It is not in the service plan, and there's a reason. This is about humanity. This is not about a statistical number that says that if you come in....

First of all, let's be clear. You come in the door. You need the services because you're developmentally disabled. You get the health and safety basic services in the home or in the group home or whatever the case may be. Everybody is eligible for that. We moved that through. That's why we've even added money for the wait-list.

The other piece, though — as I tried to describe earlier, and maybe I didn't do a good enough job of it — was somebody who had seizures and perhaps needed assistance today. The urgency on that list for that individual is different than for an individual who may be transitioning to a home based on a request from parents who are prepared to wait as long as they're healthy.

I mean, this is a very, very special community of people, thousands of people who have different pressures relative to their developmental disability, whether it be from Down syndrome, whether it be from other illnesses or things that they have in their lives. Our whole objective is to make sure that the health and safety issues are there for families to be taken care of and that, if they request additional services, we assess the urgency, the need and the timing with the family to make sure that we can achieve that goal together for the child or, in this case, the adult child who is in need of these services.

The member could be critical one way or the other of whether we should have something in the service plan. Dealing with mental health and addictions in other areas of this ministry, I do know that until you decide that your business is about people and about the individual and about the services that individual needs rather than trying to put somebody into a square box and say, "This is what you all get, and nothing changes because each one of you is the same," you will fail.

I believe that the model is to adapt and change and be flexible for the needs of the developmentally disabled person in our communities. If you ask people on the clinical side or the mental health side or the service side, they would tell you that they think that's the right model.

Sometimes those needs are identified at different levels, depending on the person's human condition.

[1045]

What we do is the assessment. We do the decision. We find the services. We deliver the services in an appropriate amount of time as they're available. But nobody is left out in the cold on their basic services.

As these requests come in, they're assessed and they're dealt with. Sometimes the requests aren't needed for the individual, and sometimes they're more urgent than others. Each individual needs to be treated as an individual human being, because that's the only way you'll be successful with the services for the cohort of people we're trying to help.

S. Simpson: I know this is a complex area for the ministry. I've had the opportunity over the last few months, since taking this critic responsibility, to meet with parents of young adults who have developmental disabilities. Clearly, it's been a mixed bag in terms of the services and the challenges they've had to meet the needs. There's no question that they're getting some of them met, but there's been some level of frustration around that.

I appreciate that it's not an easy task, but there are challenges out there. I know there are some frustrations with the advocates and with others about how things occur, but we'll probably not get to talk about that too much.

I do want to move to the 595, just so I can understand. The 595-person wait-list is the list of people who have yet to receive services. It's been determined that they are in need of a level of service. They have not yet received it, and that list, I think the minister said — and correct me — was from a January list. Sometime around January that list was established. The additional funding that's in the budget is to address that list.

Could the minister tell us when it's expected for that list to be cleaned up and for those people to begin to receive or to receive services?

Hon. R. Coleman: Through to the member: all the folks identified on the wait-list in January 2009, by the end of October — October 31 — will either have been given services or have an offer of services for their developmentally disabled child. There are still people on a list that will need services, because we've had more intake since January to now. All of those folks, because of the budget lift, will also go through the process we identified for services and be offered services.

Basically, today you could safely say that folks on the waiting list who have adults with developmental disabilities are offered or have received a suite of services, all of them by the end of October this year. Given that the fiscal year starts on April 1 and the work that would go into accommodating that many people with a budget lift, that's actually a pretty good performance on behalf of CLBC, now that they have the funding to do it.

The thing you always have to remember is that the reason you make the offer of services is because each individual is different. The assessment could be done, as in, "Here's the services we offer," and the family may say: "Well, that's not what we want." Then you're back into a discussion about what the two should look like working together. It is a very emotional situation for each individual file, and a tremendous amount of work goes into each individual file. We work with the families to get them to where they're in a comfortable level of services for each individual person.

S. Simpson: I can understand this. The 595 number that the minister quoted was the list.... That was the number coming out of earlier this year. Those 595 individuals will have received either service or an offer of service by the end of October, I believe the minister said. The minister then said that obviously, this list isn't static. There are others.

What's the expectation of how many people will be sitting on a list come the end of October, after these folks have received either service or an offer of service? What's the list going to look like, which presumably has to get addressed over the coming few months?

[1050]

Hon. R. Coleman: We don't have that number here for the member, but I'll get it for him. I'm advised that it's somewhere around, probably, 200 people that are cycling through at any given time who will be in process. They would technically be people without services who have requested services.

One of the things we're trying to accomplish with the integration between us and Children and Families and the integration across government on this file is that we're trying to get to where, at age 16, we know what individuals coming through the child side of the system are going to need services by the time they're 19.

The second thing we're trying to accomplish is that at 17½ — proactively, rather than retroactively — we actually will be sending people from our social services side to meet with the families and take applications for the PWD funding, which is persons-with-disabilities funding, for people who are eligible for that under social services. Obviously, this cohort of folks at Community Living B.C. is also eligible for that type of assistance.

Rather than have families go through this, arriving at a social services office and waiting to get in line or whatever with somebody that is developmentally disabled, we've shifted to where we will go to them at 17½, take the application and process it prior to them turning 18. At 18 they're eligible for the PWD through social services. Yet under the law on the adult services, in addition to that, the children's side takes them to 19, and we pick them up at 19.

As we get better at our data starting three years back, we will actually be in a position to have the services

identified and the costs in advance of people actually arriving on our list. That doesn't mean that we're going to identify everybody, because some people move in and out of the province during that period of time and that sort of thing. But that's our goal. The goal is to make it as seamless as possible for the families. We think that's very important.

S. Simpson: The budget that has been allocated with the budget lift — is that sufficient funding? Are there dollars there to provide those 200-odd people that are on the list with services? Are there resources to do that now — dollars available in this budget — or can we expect that that would require additional funds to be able to meet those needs?

[1055]

Hon. R. Coleman: The budget lift, which is over the three-year cycle, is enough to deal with that and our additional clientele that we anticipate getting over that cycle. So CLBC is comfortable that we're in a position where we will be able to offer services to every individual that comes through over the growth of this. It's about a 6.8 percent growth on 12,000 services.

Our biggest challenge is not going to be financial. Our biggest challenge is going to be being able to have additional capacity for services. So we may need more of certain types of workers or people available in communities to deliver these services than we have today. Whether we'll have that capacity will be our biggest challenge, especially with the same thing that I guess we're facing everywhere else — the aging society and people retiring and changing positions and careers and what have you — and that we have the ability to deliver the services, in addition to the health and the safety stuff, back in the communities.

The health and safety part we can deal with. The additional services sometimes require a certain level of expertise that we have to find. If it's a smaller or remote community, it's a bit tougher than it is in, let's say, a metropolitan community.

We've identified that as one of our challenges, and we will work with the challenges. But on the financial side, the money committed by government to CLBC is, from my understanding, enough to deal with the issues.

S. Simpson: I appreciate that, and if the minister could ask staff maybe just to provide me a breakdown of the wait-list by region of the two categories. I don't need to get it verbally right now, but if they could drop me a note just saying, "Here it is at a regional breakdown of the two categories of waits," that would be appreciated.

What I'd like to do, though, is move to the question of CLBC eligibility — the IQ-at-70 question. Could the minister tell us: what's the current status of the IQ-at-70 rule?

[1100]

Hon. R. Coleman: It's a very complex description. I was trying to get as much of it as I could boiled down into a description that would be suitable and still not go down a road where I have to get into becoming a person that does the clinical analysis of each individual.

Basically, we have an accepted international standard today that with IQ 70.... The courts have told us that we need to change, so we committed that we would move towards a different standard. Basically, we're planning on an expansion of the eligibility criteria that could also add things in addition to some descriptions of developmental disabilities that exist.

The technical side of it is that we would be planning to expand to a broader function of a psychological assessment on a standard that we're developing. We're doing that in conjunction with the community — which is the parents, the families, our service providers and what have you. Plus it also touches on four ministries of government and one Crown. It has Education involved, Health involved, Children and Families involved, Housing and Social Development, and Community Living B.C. involved.

The expanded broader function is to start to determine how we can also assess autism spectrum disorder as one of the contributing factors to services being provided — fetal alcohol syndrome, as well, accompanied by other adaptive functions that would be in an assessment. The plans are to implement the new standard in February of 2010.

We've set out to try and accomplish it by a certain date, which is the goal there. The courts have actually given us time to do this, because it does require a significant amount of work to change this. We have set down the path to do this in consultation with the community, and then we will put the new reg in place — and what the definition is — so we will be in a position to be able to handle this in the future.

S. Simpson: I believe that the IQ at 70 came into force in July of 2008. I know that the minister himself called this at that time in the *Vancouver Sun* an interim measure and spoke in a second article in the *Sun* about.... I believe the quote was: "What we want to do is now move past this piece of history and move on to coming up with a long-term definition."

So the question I have.... It's been over a year now. What is the expected timeline to bring in some kind of eligibility definition that is less arbitrary than IQ at 70?

Hon. R. Coleman: Let's be clear for the member. IQ 70 didn't come into effect in 2008; it had been in place in British Columbia for decades. The difference was the courts told us that the way that IQ 70 had been designed, I believe, by policy was not acceptable because it wasn't in a law, and therefore, it could be challenged.

[1105]

There was no legal authority for what was being used, by previous governments and ours, with regards to defining developmental disabilities. The advice we got at the time was that in order to get to where you can define the new definition and deal with the issues in and around the court, you had to formalize by regulation the existing process for developmental disabilities in a reg while you developed the new measurement.

The reason that was put in place then was to actually deal with the legal advice and the stuff coming out of the courts in order for these guys to continue to do their business in some measure of legal fashion so that we could get to where we could do what we said we'd do. That was: once we did this, we would then go to work to come up with the new definition.

That is not an easy body of work. I think that the courts recognize that. In actual fact, we could have just probably said, "We're going to put it into law," and stood back and said: "There, we've done it, and that's enough." But what we said.... We committed to come up with a new definition. As that started to get done, it became a pretty complicated discussion.

The intention is to get the regulation in place very, very soon, which would allow us to implement a new definition in February of 2010.

S. Simpson: So February of 2010 for the change. I point out to the minister that part of the problem with IQ at 70.... As the minister says, it was around what some would call maybe a soft rule before the OIC that was one of the determinants that CLBC would use in determining eligibility, but it wasn't hard and fast. Once you make it law, then it becomes a much harder rule, and it becomes one that gets used. And that's the problem. Of course, making it the law is what the court saw and deemed to be ultra vires.

The minister is now saying that it will be changed by February. What consultation is going on? Because part of the concern that the community and the community interests and advocates had is that this was done, in their view, with little or no consultation with them. So what consultation is going on with the community today over what those changes around eligibility will look like?

Hon. R. Coleman: Let's be clear. I have to clarify something the member just said. The courts have not said that by doing the regulation we did anything ultra vires. What the courts actually told us, by our legal advice, is you have to formalize what you're using as your standard today — or it's not going to meet the test of the court case — and maybe you should look at your definition.

This is not a political statement — so the member understands this — but I think that it crystallizes for us how long this problem has been away. This is just a quote from Lois Boone, who was the Minister of Children and

Families, on June 7, 1999: "As I understand it, the 70 IQ has always been the policy. I would be very reluctant to say that we shouldn't be using 70 IQ which has been in place for a long time, because we need to make sure... the services are there for those who need it the most."

IQ 70 was there. It was challenged to the courts because IQ 70 was a policy, written in policy as the standard of measurement. The courts said: "The policy doesn't give you enough of a legal right to basically survive a challenge to your policy, so you should make it a law." So we did.

This is plain language, because I'm not the lawyer that would have looked at all this. We actually formalized what we were doing so that we could continue to provide the services while we did a new definition for the people with developmental disabilities in B.C. It has not been short-term work, so we've actually....

I'll just let the member know, even on the community side, who we've consulted with as we've developed this new definition that will come into place in February of 2010: the Langley Association for Community Living; Family Support Institute; Behavioural Solutions Inc.; Communication Behaviour Institution; Vela Society; the B.C. Association for Community Living; CYR Office; ministries of Education, Health, Children and Family Development, Housing and Social Services; and parents.

[1110]

As we've done that, we've now come to where we have a definition, we think. The regulation that exists today needs to be replaced by another regulation to come into effect in February so that we can legally deliver the services under the new definition.

All of that work is basically completed. The regulation will be done shortly. When it's done, then we will move towards the implementation in February 2010, because we will have the new regulation to design services around.

S. Simpson: Well, what we know is that the government initially lost the court case on this. There isn't a question here around whether there are a number of considerations or criteria and that IQ is one of those criteria. The question is when it becomes hard and fast.

We know that the government lost the case, and we know that they lost an appeal on this, which led to the OIC in '08. Now the minister is saying that we're going to have new rules by next year, at some point next year.

Could the minister tell us: at this point, how many people have been denied service based on the IQ-70 rule as the final determinant of rejecting them for service?

Hon. R. Coleman: First of all, the province of British Columbia lost the court case. The standard of practice was in place over three separate governments over decades.

The question the member asks is impossible to answer, because I don't know how many people applied for services for developmentally disabled children during the 1990s or even back to the 1980s, when IQ 70 was the policy in government.

The policy was challenged, and the province, in today's legal environment, lost the challenge. That's why we're doing the work — we've done the work, quite frankly — to come up with a new definition.

There's no sense in getting into pointing fingers at who was responsible for IQ 70. You can go back to a plethora of *Hansard* discussions with regards to this, back over two governments, or two previous governments plus this government — so three governments — with regards to IQ 70.

I think that what's happened, as we've evolved in the understanding of developmental disabilities, is that our understanding of autism is better, as is our understanding of other multiple things that affect the barriers of someone to actually function without services — including fetal alcohol spectrum disorder, which I don't think we probably had as good an understanding of 20 years ago as we do today. This is the evolution.

The courts, under appeal, told us what we had to do. We're doing it.

I'll repeat it again, because the member said "sometime in the future" in his remarks. February of 2010 will be the new definition as a result of a new regulation put in place as a result of extensive consultation and work with the ministries, the community and parents to get there.

I would suspect that over the next number of years that regulation will still have to have some adaptations as other issues come through, whether it's because of the effect of a drug in our system — like crystal meth, which actually can be damaging to people's ability to function — that may in the future actually have a different effect on how we define developmental disabilities for services.

We have taken what the courts have told us. We've done what our legal advice told us we had to do in order to be able to legally continue services under the existing definition while we developed a new definition. We've developed the new definition, we will do the regulation, and we will implement in February.

S. Simpson: In July 2008 the OIC was passed that made the IQ at 70 a hard rule. It wasn't a soft rule anymore. It became a hard rule. How many people have been denied service since July 2008, since this became a hard rule?

Hon. R. Coleman: We don't track those numbers, and we didn't track them before this went to court — to go back and say how many people might have had services in any given year because of a definition that existed within government.

Just for the member's understanding. The courts told us that this is what we should do, or our legal advice was that this is what we had to do as an interim measure while we developed a new definition. We've done the work to develop the new definition, and that new definition is coming into place in February of 2010.

When the regulation comes out in the very near future which will identify what that new criteria is, the member and everybody in the public.... Obviously, the final regulation can't be disclosed until it goes through executive council, because at that point in time, that's the only time that it becomes law.

We've done the work. We've consulted with the community. We did what we said we were going to do, and we're going to put a new system in place.

To try and couch it that somebody has done something different here other than what the courts and legal advice told us we needed to do — but then also to do it correctly, with the proper consultation and the proper information.... To be able to get a new definition that we think can work was a significant challenge. We did what we needed to do to protect the ability for our people to continue to deliver services while we developed the new definition.

S. Simpson: Well, it certainly appears to me is that what the government did was it put this in force. I find it pretty remarkable that the government wouldn't have some sense of the number since July '08 when CLBC was obliged to use the IQ of 70 — not as a consideration or one of the determinants but as a hard rule. Apparently, that's not the case, and we don't have those numbers.

My question, then, and my last question in regard to this area: has the minister looked at the budget implications of a change of this rule? What's it going to do in terms of additional costs, based on the plan that might be coming in February? I'm not asking that the government disclose the plan, but what are the budget implications of the new plan?

Hon. R. Coleman: I want to clarify some things for the member. IQ 70 wasn't the only measurement when we were determining services in the past. We had IQ 70, adaptive functioning assessments plus a clinical assessment by a practitioner that actually defined what a developmentally disabled person was, for services.

Just for the member's information, that is what is the international standard today. It is what actually exists in every jurisdiction in Canada today. The courts said that if you're going to continue to use this because you have it in policy, you need to put it in law.

Theoretically, you could have stopped then and said: "Okay. We've now met our responsibility to the courts. We've actually put what is now the international and national standard in place." We said: "We're doing that, folks, but we're going one step further. We're going to be

the first jurisdiction to go and come up with a new definition, in addition to this, that will work for a broader group of people that would be affected by developmental disabilities."

So let's be clear. International standards, Canadian standards — the courts said: "There's a problem with policy. You've got to do a law." We did the law. We could have stopped there, but we didn't.

Then we went to work with the community — the developmental disability community — with ministries, with parents, and said, "If we could come up with a new definition, what would it be in order to deal with this issue?" — particularly the one measurement within the issue, which was using IQ 70 as a particular level of intelligence, as one of the measurements for services they might get. We did that.

[1120]

We've added money into this year's budget — \$2.6 million — and money into the fiscal plan of what we anticipate the new definition in February will have on the fiscal plan over the next three years.

S. Simpson: It's been clear that the government brought in a hard rule in July '08. It has been 18 months while the government has been making decisions about how they address what has been a very legitimate reaction to such a hard, arbitrary rule — not a determinant, not a consideration, but a hard cut-off rule.

We'll see, I suppose, in February whether the government got it right or whether the government screwed this up too. But I'm moving on.

Point of Order

Hon. R. Coleman: Point of order. We're not going down this insulting....

The Chair: The member will be careful and stick to parliamentary language.

S. Simpson: Absolutely. I appreciate the advice, hon. Chair.

Debate Continued

S. Simpson: I'm moving on now to issues related to income assistance. I don't know whether the minister needs to....

Hon. R. Coleman: I want to respond.

S. Simpson: Okay.

Hon. R. Coleman: Thanks, hon. Chair, and I won't use unparliamentary language to describe this. I will go back to the quote, to 1999, when an IQ of 70 was one of

the measurements. I will go back to the fact.... I want to make it very clear to the member.

All we did was take a policy and formalize it in law, because that is how we were instructed to do it by legal counsel and informed by the courts. IQ 70 had been in place for decades before that, so if the member thinks that somebody messed this up, look in the rearview mirror. It was also there during the former government's time and the former-former government's time, as a measurement.

It was an internationally accepted standard. The only issue in and around the standard was that it was in policy, and it hadn't been formalized in regulation. By formalizing it in regulation, we would have been done, technically, on what we needed to do.

We said that we needed to do this because, quite frankly, the day the decision came down, nobody had a new definition that they could roll out tomorrow without talking to all of the medical professionals and the clinicians and the families and the service providers and the ministries to come up with a definition that we thought would be better.

Being the only jurisdiction in North America that is doing this, we thought it was a pretty important body of work, and it did take some time. I have no objection to that. The member can decide whether we got it right when he sees the regulation. Actually, you know what?

Five years from now we might know whether we got it right, or we may have to change it in two or three years because we have a different medical pressure that comes with regards to people with developmental disabilities that may change as our environment changes with regards to health care and issues in our province and in jurisdictions across North America.

I don't want to leave this debate going over to social services without saying this. Community Living B.C. is a phenomenal organization that does incredible work with families under significant stress. They do it and work with people to find the adaptability to be able to give them and their families a quality of life and should not be underestimated.

For generations the definition has been the accepted standard internationally and has been there for those folks. We're the government. We're the province — not just the government. We're the province. I don't think it's so "government and province" in this, because this is always about people — people who need services when their family is under stress, when their adult children are having difficulties, whether it be multiple seizures and they need more respite, whether they need a different group home situation.

You need an organization that is professional and can deliver those services. If you want to step outside that box that everybody else is in, it takes time to draft something new, to make it available to more people with

different barriers that may add in to the definition for developmental disability.

That has been a huge body of work. In the meantime, they have literally figured out their wait-list, come to government and been funded an additional tens of millions of dollars to meet those wait-lists. They worked on the definition with government to come into it so that we can put it into regulation and implement it in February.

They have also identified the financial future requirements as that definition comes into place. I think those are all actually good news. I also think the fact that we're prepared, as a province, to step outside the box and get a new definition is important, given the fact that we're the only guys who are moving away from this international standard today.

[1125]

We're going to find the solution. The member, I and others will sit back and judge just how that definition has worked over the number of years as we see it evolve into additional services for folks or additional criteria for people on eligibility so that we can be there for these folks.

I just can't leave it. Unfortunately, for the last comment, the one word that the member used intimates that the people at CLBC have actually messed up people's lives deliberately. That is not the case. They have done their job. We have done the definition based on moving outside the box that is the international standard so that we can deliver the services to more people.

S. Simpson: I didn't mean to suggest for a minute that the people at CLBC messed it up. I'd suggest the minister and his colleagues in cabinet messed it up with the OIC.

The reality is this. This government lost a court case. They then lost an appeal in '06. At that point nothing was done that was clear until we saw another petition filed in the courts in April of '08. Then shortly after that the OIC comes in that entrenches the hard rule around IQ at 70. It's no longer just a consideration or a determinant — a hard rule.

Now the minister stands up....

The Chair: I just advise the member to talk through the Chair, please.

S. Simpson: My apologies, hon. Chair.

Now the minister tells us that he has no idea how many people were affected by the hard rule in '08. What I would say is that this government lost their court case. They lost an appeal. They ignored it, essentially, until another court case comes into play. Then they take a ham-handed approach to this, put this OIC in place, which is totally just detrimental to the people in this province — to parents, to guardians, to advocates, none

of whom support this position by the government. Then we move forward to where we are today.

I do agree with the minister on this. He has said now another 18 months — 18 months after losing the court case — then this arbitrary decision in an OIC. We've now had another 18 months. We will see. It won't be the minister and I who will determine whether this is a good idea, whatever comes in February. It will be the parents. It will be the guardians. It will be the advocates. It will be the public.

I look forward to the changes the minister has advised us are coming in February, and I look forward to seeing how those people who have the most expertise and the most investment in this — the loved ones of people who have developmental disabilities — respond to this.

I don't know whether the minister wants to reply again. If not, we will move to income assistance, or he can reply again.

Hon. R. Coleman: I am happy for the member to have his rant. If he feels better, that's great. He can read from his New Democratic Party press release that he has in front of him with regards to IQ 70.

All I can tell you, Member, is that the international standard has been for decades, including underneath the former NDP government.... The IQ 70 is one of the measurements. When somebody decides to challenge it in court.... You could make a decision not to challenge it and not to fight for what is the international standard. You could choose not to appeal. But government functions on legal advice. It was instructed by the courts on additional legal advice during appeal, on additional legal advice as to whether there would be another process legally or whether we should move to regulating it so that we could change the IQ.

You can go and rant about the fact that the government actually tried to defend a policy within government in the courts and not like it. That's fine. I'm okay with you having that opinion, quite frankly.

All I know is that when the advice came as to what needed to be done in order for us to formalize what is the international standard and used in every province in Canada with regards to the measurement for the definition of developmentally disabled — because it was in policy, and it needed to be in law — we put the law in place, and then we made the commitment at that stage that we would come up with a new definition.

If the member doesn't like the fact that it wasn't done in three months, hastily, without having the proper consultation versus 16 or 18 months by the time the actual implementation date is — because the reg will be in place long before the implementation date — then that's fine.

[1130]

I can tell you that the people in this government and the people in this ministry — since I've been involved

on this with CLBC, now for about 14 months — and this new ministry have worked their cans off to get to where they can find a workable definition for this particular thing that will stand up against a number of things — a future court test — under legal advice that we think is workable for the definition for people that might have developmental disabilities. That's where we're at.

[H. Bloy in the chair.]

I appreciate that the member thinks it was wrong for the process we went through — to take our legal advice, go to the courts, appeal, take our legal advice, make the decision on the regulations so that we could formalize it to be able to actually deliver the services legally while we did the new definition. I get that.

However, the work that's been done on this is not just going to be work, when we bring in the new definition, that is going to affect British Columbia. I think that it's going to affect the entire country. When you do that, you'd better spend some time to make sure you do the proper consultation with legal advice and the development of the regulation and the consultation that you do to try to get to what you think is workable.

At the end of the day each and every one of us will look at the definition and try and find one exception to the rule that doesn't work, just like people have tried to find exceptions to the rule of the previously acceptable international standard. Or they will say that you should add something that was never anticipated because it wasn't actually on the radar screen with regards to people in the future. That's why you adapt in the future.

It's been decades with one definition — decades of policy, development, regulation, deliveries of services, measurements by clinicians, measurements by doctors, assessments by advocates based on something.

If you're going to change the something that has been there for at least three successive governments over decades in the province, you need to spend the 18 months to work on it and do the consultation and look at it. That's what we've done. In February 2010 — and long before February 2010 the regulation will be in place, so it's there, so people know what's coming — the member will see, I think, that they've done a pretty good job on the definition.

S. Simpson: This isn't about what I think. Let's look at what people who have a role to play in this said.

When this decision was made, the B.C. Coalition of People with Disabilities called it a "cruel, unfair and unjustifiable action." The president of B.C. FamilyNet Society said: "The closed-door nature of this decision, like others made recently without transparency, consultation or a strong evidence base and despite serious implications for individuals with developmental disabilities, is not consistent with a commitment to transparent

and accountable government." That was in a letter to the Premier.

Vancouver Parents for Successful Inclusion: "It's outrageous, and it's outrageous that they did this so secretly, thinking they could get away with it, it seems, without people knowing." The B.C. Association of Social Workers was appalled and said the move "slammed the door on some of B.C.'s most vulnerable citizens."

The Vancouver school board said it wouldn't countenance "giving government, for any length of time, the arbitrary right to deny services to vulnerable adults who happen to have IQs over 70." In the same letter they said they were "concerned that the amendment also gives the government the right to deny services to developmentally disabled children and youth who have IQs over 70."

Dawn Steele and the Moms on the Move complained. The B.C. Association for Community Living complained.

The point I make is that this isn't about what I think about it or what the opposition thinks. It's about what the groups and the organizations in the community and the parents and advocates and guardians of people have to say about the move that entrenched IQ 70.

Hon. Chair, I would like to get started here — and we're not going to have a lot of time on this — to move to income assistance matters. I don't know whether the minister requires different staffing.

Hon. R. Coleman: While my staff changes over, I will respond to the last comment by the member. Yeah, when it came out, people thought it was arbitrary. Most of those groups the member has mentioned have since met with us and discussed it and have been pleased to give us input on the new definition.

A number of them that I met, that I personally talked to, understood the legal parameters and what had taken place. Their initial reaction was somewhat more negative than it was after having that explained to them.

Now there's no question. They've been engaged on the definition development. There's no question that some of them will have differing opinions when they see the new definition, which, frankly, is probably healthy. You can always have more input as you try and develop future laws as well.

[1135]

So yeah, in the initial stages, but at the same time, if your advice is that you have to protect the legal right of government to deliver a particular service and the advice is you do that while you're trying to develop something else... There would be just as much criticism coming from the other side if we had thrown it wide open with no definition and nobody could define what was going to be the operating environment as we tried to develop a new definition.

We chose to define the international standard, the Canadian standard, as the definition. Then we moved

forward to move on the new definition, which has been an extremely intense and difficult body of work for people to do. I think they've done a pretty good job on it.

S. Simpson: I'm going to assume now.... I see the minister has some new officials with him, or some different officials and some of the same officials. I'd like to welcome them and ask a couple of questions, not a lot of questions, related to income assistance.

The first one. As obviously the minister and everybody knows, the category around employables has increased dramatically because of the economic situation that we're facing in the country — numbers of people who would have traditionally or historically been in the workforce lost their jobs, ran their EI out because of tough economic times, ended up on the welfare rolls, who would not normally have been there.

I know that there could be eligibility questions here in relation to that. I'm wondering whether the government is giving any consideration to folks who get put in that situation. They may have asset levels that would be greater than what would normally be expected, but because of what is, I think we would all say, a somewhat unique situation and not a very nice one, it drops so many people onto IA rolls who would not have been there.

Has there been any consideration given about eligibility requirement — value of a vehicle, those kinds of things — for those people who are in this unique situation?

Hon. R. Coleman: To the first part of the member's question, no, we're not changing our eligibility requirements. We've always had, in successive governments, with regards to social assistance or income assistance, basically that assets are taken into consideration. If you have an asset and you're above a certain level, then it's always been the situation that that should be liquidated in order to pay before the payer of last resort, which is income assistance, comes into play.

There are cases where hardship is accepted. The hardship can be a number of things. I'll just walk through them.

It could be awaiting employment insurance benefits — for a person that's transitioning, that's waiting for employment insurance benefits, for the applicants who are awaiting EI from Service Canada. It could be awaiting other income — for instance, from CPP and that sort of thing.

Assets in excess — for specified applicants who have assets in excess of exemption but which are not immediately available. In other words, they have equity in a home. It's not immediately available. They'd have to sell their home to access it.

A strike or a lockout. Disqualification for fraud and related offences — for applicants with dependent children who are ineligible because of a fraud or related offences.

Income in excess — for applications with dependent children with income in excess of the maximum rate that could have been reasonably expected to meet the basic needs. That would be an adult child making an income and living in the same home, which is the same as in social housing, where we take all the income of the household into consideration.

Sponsorship undertaking default could be basically for applicants who are awaiting verification of default of a sponsorship undertaking. That's when, under the PDP program, people sponsored somebody into the country and should take responsibility for them. So there is that.

Issues with having difficulty getting the establishment of identity or with having a SIN number available. These are for applications that are sanctioned with imminent danger to physical health, which is basically for applicants who have other pressures. After-hours emergency assistance.

Now, those types of hardship grants which are done are repayable. They're not just given — they are repayable; if you have assets and we're giving you a hardship grant so you can get past a difficult time, at some point in time you would have to deal with your asset or your income to pay us back — because that's not what income assistance, IA, is supposed to do. It's supposed to be there, basically, for folks who have exhausted those types of assets and exhausted their situation to where they need income assistance to be able to continue with their daily lives.

It's always been the payer of last resort. That criterion hasn't changed for some time, and it's not going to change.

S. Simpson: Could the minister tell us whether the ministry has done projections — again, particularly in the employable class, people who've been hit by the economy, where we've seen, I think, increases in the 50-percent-plus range, over the last short period of time, of people who've been hit with that? Are there projections for what the expectation is around growth in that area for the next couple of years?

Hon. R. Coleman: Well, on page 155 of the fiscal and financial plan update of 2009 we show the numbers of what we have under "Temporary assistance," which would be the expected-to-work caseload. The actual number for 2008-2009 was 42,512. In the September update we were projecting that that number will grow to 56,382, rising again in '10-11 to 58,503 and then starting to drop down again in 2011-12 to about 50,802.

That's the expected-to-work category. Those folks are basically put on things like training, job search and

what have you, because they're in the expected-to-work category.

The numbers go on like that, even with the cycle of... What the historical cycle is, is that the list rises and takes a longer time to decline in an economic turnaround than to rise. That's why it's a challenge to project these things.

I'm sure we'll continue some of these discussions this afternoon. Mr. Chair, I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 11:45 a.m.

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Published by British Columbia Hansard Services,
and printed under the authority of the Speaker.

Printing Agent
Crown Publications, Queen's Printer for British Columbia
563 Superior St., Victoria, B.C. V8W 9V7
Toll-Free: 1-800-663-6105 Telephone: (250) 387-6409
Fax: (250) 387-1120 E-mail: crown@crownpub.bc.ca

Rates
Single issue, \$2.85; per calendar year, mailed daily, \$396. GST extra.

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