LEGISLATIVE ASSEMBLY OF SASKATCHEWAN

July 15, 1982

EVENING SESSION

COMMITTEE OF THE WHOLE

Bill No. 16 — An Act to amend The Interpretation Act

Clause 4 (continued)

MR. SHILLINGTON: — Thank you very much, Mr. Chairman. I made a brief argument in favor of the amendment. However, it is fair to say that the Minister of Finance, who I gather is now piloting this, was not piloting the bill at the time, so I will repeat what I said.

The arts board was set up in 1949. Basically, it is and always has been a grant-giving institution. In the days before grants became a way of life with governments here and elsewhere, this body was set up to give grants to artists and cultural groups. Since it was set up, it has, through a variety of different governments, been seen as sacrosanct, beyond the touch of politics. I may say there is an excellent reason for that. This body gives out grants to cultural organizations. What cultural organizations do and say relate to how men think and feel and see themselves. An arts board which is starkly political, or even moderately political, could be a powerful propaganda tool. For that reason, the Thatcher government didn't make any changes. When it came in, the Blakeney government made no changes.

We, therefore, propose this amendment. I really cannot believe that the logic which members opposite have used to justify this bill can apply to the arts board. I really can't believe that this is an institution over which they want to put their political stamp. If they do, there will be a lot of artists and cultural groups that are going to be pretty concerned.

I'll take my chair and ask the minister what their position is with respect to this amendment. I hope it will be accepted. I'll leave it at that for the moment.

HON. MR. ANDREW: — Mr. Chairman, I don't think it will be of much value for me to simply repeat many of the arguments advanced by the Attorney General during most of this afternoon. I don't think that serves a great deal of purpose.

I will say, with regard to propaganda, though, that I don't think that the members opposite should take such a sanctimonious approach to principles about propaganda. You can talk about propaganda all you want. It seems to me that over the last four years that I was in this Assembly, and the last four years that I was involved in politics, a lot of propaganda came out of the government that was defeated on April 26. I think the people of the province of Saskatchewan, certainly with regard, let's say, to the crown corporation advertising . . . That became propaganda. So, from the overview, I don't think that we have to hear the sanctimonious argument that somehow this government is going to use a particular board for its propaganda agency.

I think the Attorney General over and over again indicated to the Assembly today that the function of this legislation was to provide a basic overview principle on these particular boards and commissions. We are going to proceed with that.

I think the proof of whether or not we are going to politicize all aspects of government, all aspects of boards, is going to be seen in the next year or two of this administration.

I dare say that when we stack our performance up against the performance of the previous government, then one thing is going to be clear; the administration of government in general, the administration of crown corporations in general, and the administration of various boards and commissions is going to be far less political than it was under the previous administration.

SOME HON. MEMBERS: Hear, hear!

MR. SHILLINGTON: — Well, I must say that I'm not sure what to make of those comments. Are you saying, "You guys wrote the book on propaganda; therefore, why be so sanctimonious"? I suppose the logical conclusion to be drawn from that remark is, "Okay, we're going to do the same, and that's what we're going to do here." Is that what you are saying? Are you saying "You distributed propaganda, so we can, too"? Is that what I am suppose to assume from those comments?

HON. MR. ANDREW: — I think if you listen, what we simply said is that this administration is not prepared to be a propaganda machine like the previous administration. Looking at the government over the next four years you will not see the expenditure on television advertising of beautiful crown corporations like before. You're not going to see stuff crunched out of government to here, here, and here. You can talk about advertising if you want; in my view it was propaganda. I am simply saying I don't seek counsel from you on any sanctimonious views of the principles. You people do not have a monopoly on principles, on rights, on anything else. And the people of Saskatchewan turned you down April 26, and one of the reasons was your concept that everything is going to be political, this new administration is going to provide good government, is not going to be obsessed with politics in every aspect of government.

MR. SHILLINGTON: — I would remind the minister that an election has taken place. It's over, the roles have changed. You are not required to accept counsel from this side of the House. You are under responsibility to give us information, and you haven't done that. We've been here all day getting the same circuitous responses.

I wish the minister would just try to confine himself to the question, instead of giving us pompous lectures about what a terrible period the 1970s were. If he would just try to stick to the question — why do you feel you need to get a political handle on the arts board?

HON. MR. ANDREW: — I don't recall hearing the Attorney General this afternoon (and I thought he was very patient, given the circumstances) indicate that we wanted to put a political stamp on anything. He simply said that, overall, the principle we are dealing with here is that we believe the government should have the right, on the boards and commissions, to determine whether or not they want to make changes. That doesn't mean it's political or that we're going to politicize things like the members opposite did. I simply reiterate the statement of the Attorney General this afternoon, and I can repeat it all night if you like. I don't see how it serves any purpose of the legislature.

MR. SHILLINGTON: — I would remind the minister that the subject before the House is not the general principle. This is not the second reading of the bill. The amendment brings to the fore the application of the principle to the arts board. Why do you have to

have that principle applied to the arts board? What's the specific need with respect to the arts board?

The minister has been on his feet three times. I don't think he has ever used the phrase "the arts board." I don't think he has ever mentioned it. I really would appreciate it if the minister would try to answer the questions, and save the sanctimonious lectures for someone else.

HON. MR. ANDREW: — Well, I would simply like to once again reiterate what the Attorney General said this afternoon. We as a government view this as an overall policy; we intend to have the various boards and commissions in a situation that we can say that we would like to do this or that, or nothing at all.

As the administration unfolds (as the Attorney General ably put it this afternoon), we are going to be judged whether we have politicized this or this or this, and I can quite frankly advise you that that is not our intention. But it clearly was, in my judgment, the intention of the previous administration.

MR. SHILLINGTON: — Why does that principle have to be applied to the arts board? You haven't answered the question. You still have yet to use the phrase "the arts board."

HON. MR. ANDREW: — I think the Attorney General indicated this afternoon it was going to apply, in the purpose of this bill, the interpretation bill, as it applies to all boards and commissions. It applies to all boards and commissions. We will put our stamp on it. Some will change; many will not change, perhaps.

MR. SHILLINGTON: — Does the minister envision any changes to the make-up of the arts board?

HON. MR. ANDREW: — At this point in time I can honestly advise the House that I would not envision any change.

MR. SHILLINGTON: — Can the minister envision any circumstances under which he would want to remove members of the arts board?

HON. MR. ANDREW: — There are certainly, I suppose, situations where perhaps that could occur. I would not be prepared to elaborate on those at this particular point in time.

MR. SHILLINGTON: — Is the minister aware the arts board is on appointment at pleasure? You can remove individuals wherever you want. I really think you owe us just a simple explanation as to why you think you need the right to wipe the arts board off the face of the earth in a single fell swoop, which is what you are giving yourself the power to do.

HON. MR. ANDREW: — Perhaps I could come back to that when the officials look it up, if you don't mind.

MR. SHILLINGTON: — I've asked the minister if you envision making any changes to membership in the arts board. I gather, so far as one can make any sense out of those circuitous answers, the answer is no. I asked if you could envision any circumstances under which you might want to make any changes. You couldn't give us any. Why on earth then don't you agree to the amendment? Is it just pure obstinacy?

HON. MR. ANDREW: — Again, I just would wait until we get the make-up of the particulars of that board. I just hope you can appreciate that I haven't been wheeling this bill through the House, and if you could just give me that time . . .

MR. SHILLINGTON: — Let me ask a question of the chairman on procedure. He may want to seek advice on this. I assume that by unanimous consent we could set this one aside and go on to something else. I think it requires unanimous consent to set this aside and go on. Perhaps we might, while the officials are getting the information . . . We have 47 amendments here. If the minister wants to go on to the next one while he finds out about the arts board, we will be happy to do that.

HON. MR. ANDREW: — As I am advised, the term of the arts board is for a one-year term. What is a term of one year? It doesn't seem to me to have a lot of relevance.

MR. SHILLINGTON: — I think we need to be sure about the practice which has grown up of appointing members to the arts board for a period of one year. Am I being told that The Arts Board Act requires a one-year term? I don't think that is accurate. I think The Arts Board Act says nothing about the length of term and it is, therefore, at pleasure. The practice has grown up of the orders in council naming a person for a term of one year. I will also tell you the fact that the practice has grown up of renewing them for two further periods, and they get a three-year term. That is a practice. They are, under the legislation, appointments at pleasure. They can be appointed for any length of time you feel appropriate, including an investment period. I think if you put it for one year or three years, you have virtually no restriction. There is virtually no restriction now on their appointments. They can be revoked at any time, as well.

HON. MR. ANDREW: — The only thing I am doing is reading from the act. Perhaps an amendment has come since the revised statutes. What it says is:

> Each member of the board shall hold office for a period of one year, but may be removed for cause by the Lieutenant-Governor in Council.

I base it on the fact that the act said that. If it has been amended since then, fine and dandy.

MR. SHILLINGTON: — I think that does answer the question. It's a one-year term, removable for cause. What is there about that that's insufficient? Why isn't that adequate? That's the question the amendment raises. It doesn't raise a general, philosophical question about the rights of government to sweep out the halls on assuming office. It raises the narrow issue of what's wrong with that. Why do you need to change that?

HON. MR. ANDREW: — I think we simply go back to the original argument, which the Attorney General indicated, that this government would like to have The Interpretation Act come through so that when a new government takes office, it has the right to use that in order to put its stamp on boards and commissions. That's the general principle. It's not a specific thing with regard to the arts board. If there are 10 people on the arts board who are all politically appointed, you can wait a year and put some more political people on the board from another stripe, but you don't solve a great deal.

The assurance I can give you is that it is clearly not the intention of this government to put a bunch of card-carrying Tories on the arts board. Far from it, but there is a

principle, and I simply don't think we have to back over and over that principle.

MR. SHILLINGTON: — Why does your general principle admit to no exceptions?

HON. MR. ANDREW: — Well, I think it has exceptions, and I think the exceptions advanced by the Attorney General this afternoon were very significant. What he said is that any appointment that a government somehow believes should be for a longer period of time, as in the cases of the ombudsman and the provincial auditor, which were exempted, should be dealt with in the same way that those two appointments in particular were dealt with.

In other words, they are dealt with in a rather non-political way. This past session, the term of the provincial ombudsman was extended for a period of time, and the then government, that now sits over there, advanced the name of Mr. Tickell, so that he would proceed for a second term. The members of the opposition, who are now the members of the government, indicated that they accepted that. This Assembly, in effect, appointed Mr. Tickell for a second term, and that's good. I think that's an important, key thing.

Now, what we are simply saying is that if we believe any board appointments (and I think the House, as a whole, believes that those appointments should be for a term period) should be for that term period, they have the general acceptance of the entire House. That is a clear exemption from the rule. We intend to extend that rule past the ombudsman down the road.

MR. SHILLINGTON: — None of the exceptions mentioned by the Attorney General, in my view, have any application to the arts board. The minister is just putting red herrings before this House in talking about the ombudsman and the provincial auditor. They are already protected under the first clause of that which says that anybody whose appointment is approved by the legislature is an exception. So that isn't in any sense germane to the subject.

As I understood the Attorney General, he said "semijudicial bodies" and this is clearly not a semijudicial body. Another assurance (and I couldn't think of a more vague, less specific assurance) he gave was "other bodies in which the public have an interest in long-term appointment." That seemed to be the general thrust of it, and that doesn't seem to apply to this either. I'm not sure the public does have an interest in having a single arts board for 10 years. I think you want new and fresh blood which represents changes in the artistic community and so on.

None of the exceptions which the Attorney General gave this afternoon give any assurance to the people on the arts board that their independence will be respected. When I ask you why the arts board, you say, "Well, we have this general principle." My question then is: why does your general principle admit to no exceptions except the ombudsman, the provincial auditor, a semi-judicial body, and that fourth exception which I don't really understand (and I don't think anyone else in this House understands that fourth exception the Attorney General gives). Why not the arts board as a fifth exception?

HON. MR. ANDREW: — Well, I simply repeat the statement made now for the 75th time that the overall principle is that we believe we should have the right to review all the boards and review all the commissions, and that's what the legislation is for.

MR. SHILLINGTON: — So you want a right to review the arts board to see if it is performing its functions in accordance with your views of what's right and what's wrong. Is that right?

HON. MR. ANDREW: — I think the answer was that we would like the opportunity to review all boards and commissions.

MR. SHILLINGTON: — For what purpose?

HON. MR. ANDREW: — Quite frankly, I think I can speak for a lot of the members in the Assembly in saying that when we came to power and someone said that there are 135 or 137-odd boards and commissions with some 1,000 people working for them, it took most of us aback. We want simply to look, review them, see how they're operating, see if they're operating in the best interests of the people of Saskatchewan and, if they are, clearly there would be no changes; if they're not, then we would make some changes.

MR. SHILLINGTON: — For a government that seems to be condemned to eternal review and study, why didn't you just leave this bill for a couple of months until you had a chance to see which bodies might appropriately be the subject of this legislation and which bodies would not? Why does this thing have to be proceeded with now? Why can't you do some of your homework and then pass the thing in the fall when we're back here again?

I gather that the cabinet minister's response is, "Well, we don't know. Some boards we do; some boards we don't. We don't know." Why don't you find out before you pass the act and then you can agree to these exceptions or defend your defeat of them instead of just saying you don't know what you're talking about?

HON. MR. ANDREW: — We're simply allowing ourselves the opening that if we, in fact, find a given board here, a given commission there, that is not by order in council, we will have the power to effect the necessary changes that we have to. And I think that we have gone through it in question period; we have gone through it in the last two weeks in this Assembly. The main thrust of the criticism of the government opposite is that you're studying things too much. I would simply like to repeat my answer.

A government has been in power for 11 years. The government fell out of favor with the people and it fell out of favor with the people in probably the most dramatic way that's ever happened in the province of Saskatchewan. A new government has come into power consisting of 54 or 55 members. None of them has ever been in government before and we're not going to apologize to anyone for reviewing all boards and commissions, all crown corporations, all departments of government and every policy of this government.

SOME HON. MEMBERS: Hear, hear!

MR. SHILLINGTON: — I remind the members opposite that merely the fact that you won an election doesn't justify your every whim. Let me approach it from a different point of view. Does the minister support the concept of an independent arts board?

HON. MR. ANDREW: — Well, I think that's probably something this government would give serious consideration to. I'm certainly not going to commit the government to that particular concept at this point in time. Obviously, I don't know.

MR. SHILLINGTON: — Are you telling this Assembly that you want to review the question of whether or not the arts board should be independent? Is that what you're saying? That's an astounding proposition if it is.

HON. MR. ANDREW: — I assumed when you indicated an independent arts board you were talking about our concept for a period of long-term appointments with the approval of the entire House and I simply say I don't know whether we want to move in that direction or not. But I can tell you one thing: we are not intending as a Government of Saskatchewan to somehow go out and politicize the arts board.

MR. SHILLINGTON: — Do you support the concept which has been accepted by at least three governments — CCF, Liberal and NDP — that the arts board is an independent institution, which ought to be free from political interference?

HON. MR. ANDREW: — I have to get somewhat of a chuckle out of the member opposite. It wasn't more than about a year and a half, two years ago, that the same member, I think, was a minister. He was still then a minister in the government and he brought in a cultural policy secretariat. He was going to create a crown corporation for culture and he was going to do this and that for culture and he was going to create his own television station and tell people what they were going to read. And I simply say to the member opposite that this government is not going to take sanctimonious counsel from someone like you who, if anybody ever in the province of Saskatchewan wanted to propagandize, to politicize the cultural affairs of Saskatchewan, it was you, and it will not be this government.

SOME HON. MEMBERS: Hear, hear!

MR. SHILLINGTON: — I say once again to the minister opposite, you don't understand your role. Nothing about the history of this institution requires you to accept any counsel from me. You are under an obligation to give us information when it is reasonably requested. All I want is some information. Do you support the concept, accepted by at least three governments, of an independent arts board, free from political interference.

HON. MR. ANDREW: — I answer that question in the same way I have answered three or four times now. This government is not going to politicize every aspect of the Government of Saskatchewan like the members opposite did for 11 years.

MR. SHILLINGTON: — It is interesting that the member refuses to commit himself to the concept of an independent arts board. I have to say that that is something, quite frankly, that I didn't expect. Does the minister envision making any changes to the personnel of this board? I haven't received an answer.

HON. MR. ANDREW: — I do not represent that particular ministry of government; I cannot advise you whether we intend to make changes to that board. I can honestly say no decision has been made on that. Certainly, we wish the opportunity to look at that board to determine if it is functioning properly. If the assurance that you give us is that it is so independent, then I can give you the assurance that it would not be changed.

MR. SHILLINGTON: — Then I assume the minister will be prepared to pass the amendment. If that long monologue means that you do support the principle of an independent arts board, then I assume you'll agree to the amendment. It stands to

reason.

HON. MR. ANDREW: — I simply answered the question referring back to a Vichert report, which you described in glorious terms as being independent as well. Quite frankly, I didn't quite believe you at that time, so I'm not quite sure I should believe you now. We will study it and give you the benefit of the doubt; we have no intention of it being anything but independent.

MR. SHILLINGTON: — Once again the minister is saying that he does not have sufficient information to answer my question. Would the minister agree to postpone this bill until the fall, until he can get the information he needs?

HON. MR. ANDREW: — I think that was voted on the six-month hoist, which is, in effect, interpreted in the rules as being a vote against the bill. The vote was counted. This side won; that side lost.

Amendment negatived on the following recorded division.

YEAS — 7

Blakeney	Koskie	Engel
Lingenfelter	Hammersmith	Lusney
Shillington		

NAYS — 33

Taylor	Andrew	Pickering
McLeod	McLaren	Katzman
Currie	Schoenhals	Smith (Swift Current)
Boutin	Hampton	Weiman
Bacon	Tusa	Hodgins
Sutor	Sauder	Glauser
Parker	Smith (Moose Jaw South)	Klein
Rybchuk	Caswell	Young
Gerich	Maxwell	Dirks
Hepworth	Folk	Myers
Zazelenchuk	Johnson	Baker

MR. SHILLINGTON: — There's another amendment; I'm not going to take long on this. I just want to put the members opposite on record as apparently not being in favor of an independent board. It is the labor relations board, which decides rights having a very significant economic impact on the business community and on workers in this province. I am going to move an amendment which will provide that the labor relations board will not be subject to the act. I'm going to sit down in a moment; I would just like the minister again to tell this House why you need to get a handle on the labor relations board. What is it about their past activities or their future opportunities which makes you feel that you have to have them by a tight grip?

I move, seconded by the member from Pelly, that section 15(1) of The Interpretation Act, as being enacted by section 4 of Bill 16 — An Act to amend The Interpretation Act, be amended by adding the following subsection:

> Subsection 1 does not apply to a person whose appointment is to the labor relations board made pursuant to The Trade Union Act.

HON. MR. ANDREW: — I don't happen to be all that knowledgeable on the labor relations board. I am advised that the labor relations board is at the pleasure of the Lieutenant-Governor in Council.

Pardon me, Mr. Chairman, I beg the indulgence of the Chair. In that the amendment does not, in any way, change the act, is it a valid amendment?

Amendment negatived on the following recorded division.

YEAS — 7

Blakeney	Koskie	Engel
Lingenfelter	Hammersmith	Lusney
Shillington		

NAYS — 33

Taylor	Andrew	Pickering
Hardy	McLeod	McLaren
Katzman	Currie	Schoenhals
Smith (Swift Current)	Hampton	Weiman
Bacon	Tusa	Hodgins
Sutor	Sauder	Glauser
Parker	Smith (Moose Jaw South)	Klein
Rybchuk	Caswell	Young
Gerich	Maxwell	Dirks
Hepworth	Folk	Myers
Zazelenchuk	Johnson	Baker

MR. ENGEL: — Mr. Chairman, the act is in *Revised Statutes of Saskatchewan*, Volume 6, Prairie Agricultural Machinery Institute, page 4206. This is a special board that I think you should consider because the board members are appointed by all three provinces. We participate in the Prairie Agricultural Machinery Institute on a formula that Saskatchewan provides. Saskatchewan provides 45 per cent of the funds; Alberta, 35 per cent; and Manitoba, 20 per cent. The board members are appointed by joint agreement by the three ministers of agriculture. I think it would be quite a slap in the face and I'm not sure, with the special agreement you have in this case, why you would want blanket legislation to apply to something that you really need the agreement of the other two provinces to change, as I see it.

If you look at section 6:

> The affairs and business of the institute shall continue to be managed by a council under the name of Prairie Agriculture Machinery Institute Council, consisting of not less than five members appointed by the minister, or where the minister has entered into agreements . . .

And the agreements are, like I suggested, 45 per cent Saskatchewan, 35 per cent Alberta and 20 per cent Manitoba.

> . . . where the minister has entered into agreements under section 21 (which he has), by the minister and the persons with whom the minister has entered into such agreements.

Consequently, these agreements have been reached jointly, and you have to have joint consultation with the other three ministers. I really think that you would save yourself a lot of trouble — and I'm really helping you clean up your act in this case — if you would accept this amendment. If you do, you know you will not run into problems,

because the total act could be thrown out because of this one instance not being exactly like it. So I'll just move this amendment, that section 4 of Bill 16 be amended by striking out section 15.1(2) of the act to substitute the following:

> Subsection 1 does not apply to a person whose appointment is expressly stated in the act to be subject to the termination by the Legislative Assembly; or who is a member of the Prairie Agriculture Machinery Institute Council, appointed pursuant to the Prairie Agriculture Machinery Institute Act.

I so move, seconded by the member for Quill Lakes.

HON. MR. BLAKENEY: — It will be noted, as the member for Assiniboia-Gravelbourg has said, that there are (at least we believe there are) agreements existing between Alberta and Manitoba with respect to this. It will also be noted that the act specifically says that these agreements can be ignored. That's the substance of the words "or agreement." And the question which I would direct to the minister is: is this the agreement, or one of the agreements, which you wished to have covered by the words "or agreement" where they appear in lines two and three of the to-be-enacted section 15.1(1)?

HON. MR. ANDREW: — I don't think it was the intention of this government to renege on any agreements that we've made with neighboring provinces. Certainly we would take that into consideration and any appointment to this, if it's by agreement of the three provinces, would have the approval by agreement of those three provinces.

MR. ENGEL: — My question then is: why not pass this amendment and take that axe off those board members and deal with them on the terms that you have set out in your agreement? Why hold a special axe over this particular board?

HON. MR. ANDREW: — I understand that if we had the desire and ambition to get rid of the members on this board now, we could probably get rid of them now without this legislation. Why worry about it? If you're concerned that we are somehow going to politicize this, we could do it now, whether we had this legislation or didn't have this legislation.

MR. ENGEL: — Mr. Chairman, the point I am trying to make is: you are talking about an

individual's freedom and liberty, and here you have some board members and you're passing another piece of legislation to ensure you can hold this heavy hammer over their heads. You already have the authority; they are at the pleasure of a joint agreement with the ministers. I can't see why you want to treat this with blanket legislation when there is already legislation in place.

HON. MR. ANDREW: — I will simply put it this way. You say that we have this heavy hammer hanging over their heads, right? That's your argument, that there's a heavy hammer hanging over their heads if this legislation is passed by this new government. The same heavy hammer was hanging over their heads when you were over here before this amendment was even advanced, so where are the great fundamental freedoms and principles that are being taken away by this particular amendment?

Amendment negatived on the following recorded division.

YEAS — 7

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NAYS — 35

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Sauder	Glauser	Parker
Smith (Moose Jaw South)	Klein	Rybchuk
Caswell	Young	Gerich
Maxwell	Dirks	Hepworth
Folk	Myers	Zazelenchuk
Johnson	Baker	

HON. MR. BLAKENEY: — Mr. Chairman, there are a good number of other acts which I think ought to be the subject of amendments. I think it clear that members opposite are not in a mood to accept our amendments. In order that we not overly prolong the House, and therefore not have a series of recorded votes, I am simply going to put on the record that there are several boards, including the co-operative securities board, the municipal employees' superannuation commission, and the hospital standards appeal board, which I think ought not to be subject to this act. I would also include the Saskatchewan Anti-tuberculosis League, which heretofore has not been in the political arena in Saskatchewan, and The Workers' Compensation Act, in respect of the workers' compensation review committee, which has been outside the political arena and has worked effectively in a very difficult area.

I would say the same in a slightly different context with respect to the board of the

Wascana Centre Authority, where we have had a tradition where it has not been political. We have gone through two changes of government without changing people appointed by the previous government, and thereby have established the fact that this was not a board wherein the government of the day sought to have the members of the board be nominees of the government. Those would have been the arguments that I would have advanced and do now advance but to spare the committee I will not move amendments, since I expect that the amendments would share the fate of the previous amendments which I have moved.

Clause 4 agreed to.

Clause 5

MR. SHILLINGTON: — I don't want to be abrasive, but I don't expect anything but the stonewalling we've been treated to all day. But for the record, I really have to ask you why this thing has to be retroactive. Who was it that you fouled up on that you have to cover up?

HON. MR. ANDREW: — Pardon me. Could I have that question again?

MR. SHILLINGTON: — Why the retroactivity?

HON. MR. ANDREW: — Mr. Chairman, this is rather a legally technical argument and I can take it from no. 1 and give the Assembly and the members opposite the assurance that it's not designed to cover up errors in the sense that I think the message is coming across that someone was terminated in a term appointment where we had no authority prior to this act. Nobody in that term to date has been terminated so it's not designed to cover up a mistake that supposedly was made. That assurance is there. It's not because we went out and said, "Hey, you're off this board because we don't like you," only to find out that legally we couldn't do that so we now need some retroactivity. It's not designed for that. The legal people advise me that there are some legal matters (niceties) that it has to apply to but I can certainly give the assurance to the members of the Assembly that it's not to cover up a botch.

HON. MR. BLAKENEY: — Mr. Chairman, I read that and wondered. Clearly it could mean that it's meant to cover any change of government that happens on or after May 8 and catch your change of government. That's one possible meaning. So it wouldn't apply to prospective changes of government, but to the one that happened on May 8. That's one meaning.

Another one that certainly came to mind was that there were certain acts that had happened subsequent to May 8, which were sought to be validated, and you are telling me that the latter is not true, that there were no steps by the government, no dismissals, or changes in boards, commission, agencies, etc., made since May 8, which are sought to be validated. Rather, the argument is that it is sought to make it apply to any changes in the Executive Council, effective May 8. That is the new change. Do I have that right?

HON. MR. ANDREW: — If I can try, in my unclear way on this one, it's the legal advice to cover the situation from after the time the bill comes in. There is no intention to cover something that happened before, and I can give the members my assurance that that is clearly not what we intend to do. I certainly would be reprimanded if that was, in fact, the case, with the assurance that I have given the House.

Clause 5 agreed to.

The committee agreed to report the bill without amendment.

THIRD READINGS

Bill No. 16 — An Act to amend The Interpretation Act

HON. MR. ANDREW: — Mr. Speaker, I move this bill now be read a third time and passed under its title.

Motion agreed to on the following recorded division and bill read a third time.

YEAS — 39

Devine	Taylor	Andrew
Thatcher	Muirhead	Pickering
Hardy	McLeod	McLaren
Garner	Katzman	Duncan
Schoenhals	Smith (Swift Current)	Boutin
Hampton	Weiman	Bacon
Hodgins	Sutor	Sauder
Glauser	Parker	Smith (Moose Jaw South)
Klein	Rybchuk	Caswell
Young	Gerich	Domotor
Maxwell	Embury	Dirks
Hepworth	Folk	Myers
Zazelenchuk	Johnson	Baker

NAYS — 7

Blakeney	Koskie	Engel
Lingenfelter	Hammersmith	Lusney
Shillington		

ADJOURNED DEBATES

SECOND READINGS

The Assembly resumed the adjourned debate on the proposed motion by the Hon. Mr. Lane that Bill No. 17 — **An Act to establish a Public Utilities Review Commission** be now read a second time.

HON. MR. BLAKENEY: — Mr. Speaker, I want to add a few words to this debate. My colleague, the member for Prince Albert-Duck Lake, has dealt in some detail with

problems associated with public utilities review commissions. Their ineffectiveness in dealing with spiralling rates has been dealt with in this House and, indeed, was extensively dealt with by Mr. White, the former member for Wascana, in a very detailed and scholarly presentation which outlined the history of the public utilities review commission in Alberta. So I will not take the time of the House to review all of that information.

I do want to mention a few things about the idea of a public utilities review commission in general, and also some ideas with respect to the particular public utilities review commission proposed by the government opposite.

I think the first thing to note is that the problem that this bill seeks to redress is not a problem of improper rate increases. No one, I think, can claim with any justification that there have been improper rate increases by Sask Power Corporation, Sask Tel, or SGI. The problem has been inflation. A commission will not stop rate increases. I think that point should be made. A commission will do nothing to stop rate increases. It may well be that rate increases in the past were not properly explained. If the government opposite feels that they were not properly explained, it has many methods open to it to explain its proposals and the proposals of the various crown corporations to the public.

I will talk about power rates, and I will not in each case talk about telephone rates or SGI rates, but I think all of the arguments which I will address with respect to power rates are equally applicable with respect to the other corporations. If it is felt that the rate increases have not been adequately explained, the government has available to it the Saskatchewan Power Corporation board, the crown corporations committee, and other vehicles to explain the increases. These vehicles, particularly the Saskatchewan Power Corporation board, is a board appointed by the government. The decisions with respect to rate increases will be decisions of the government, and it will be the duty of the government to explain those increases. It will be its duty to explain them to the public, and the government will not be spared of its obligation by having an agency of the government, the power corporation, explaining them to a public utilities review commission. The public will still expect to have the reasons for the rate increases adequately explained, and explained to them.

A utilities commission is little more than another layer of bureaucracy. And a rather costly one because it involves not one, not two, but three groups of experts if the board or commission is to operate effectively. The corporation involved, and I'm using Sask Power as my example, will have to have a group of experts whose virtual sole function is to prepare presentations for the review commission. The public utilities review commission will have to have a group of experts, economists, and lawyers of its own to review the submission of the power corporation and to represent the commission when the power corporation makes its submission.

But that really accomplishes little if there is not someone who is advocating the consumers' point of view. And sooner or later, and I suspect sooner rather than later, there is going to be substantial pressure for a consumers' advocate board of some kind with its own group of experts — its own economists, its own lawyers. And you and I, as consumers of power, are going to pay for a group of lawyers in the power corporation, one in the utilities commission, one in the consumers' advocate group, and a group of accountants and engineers in the power corporation, the utilities commission, and the consumers' advocate group. It is doubtful indeed whether we will get value for the money so expended.

There are some hidden costs with respect to public utilities review commissions. One of them is that they consume a goodly amount of managerial talent. Managerial talent is a scarce and valuable commodity. To the extent that we have senior officials of the power corporation (or Sask Tel or other corporations) spending a great deal of time making up legal cases and preparing themselves to be witnesses, we have less managerial talent directing itself toward how to generate power and deliver it as cheaply as possible.

There is a third cost, and that is the cost to the credit rating of the province. The Minister of Finance has already indicated that certain provisions in the bill are there because the persons representing potential bond buyers have indicated that they are very nervous about public utilities review commissions. Certain time limits are put in the bill for that reason, or so we are told.

I think we should not ignore the fact that wherever utilities are subject to review by public utilities review commissions, they have more difficulty raising money. Now, this may not have a large impact on Saskatchewan Power or Sask Tel, because the essential security may be in the credit of the province, rather than the earning capacity of these utilities. To some extent, however, we have attempted, over the years to use the utilities and their lengthy record of profitability as a means of persuading bond buyers and rating agencies such as Moody's, Standard and Poor's to regard our bonds as good credits. Over the years this has been successful.

To the extent that these rating agencies and bond buyers are familiar with the U.S. scene, and not with the Canadian scene, and to the extent that they have experienced utilities having difficulties when review commissions deal with their rates, the credit and the credit worthiness of bonds floated for the purposes of Sask Power and Sask Tel will be affected. I am not asserting that that will be a large factor, but I am asserting that it will be a negative factor.

Before turning to the bulk of my argument, I want to raise a couple of specific points, because I wasn't clear what was intended when I read the act. The act appears to deal with power which is dealt with on a retail, wholesale, or bulk sale basis to municipal corporations. As I read the words retail and wholesale, it seemed to me they were together totally inclusive. Either one sells something at retail or one sells it at wholesale, and I am not sure whether there are any other categories. Clearly, another category is thought of, and that is bulk basis. I would have thought bulk basis was wholesale, but I'm not here quibbling about the words. I am quibbling about whether or not the bill means that there are bulk sales of power to persons other than municipal corporations which will not be covered by the act. And I am going to inquire as to whether or not the act, will, for example, apply to a bulk sale of power to a new potash mine, or to Interprovincial Steel, or to a pulp mill, whatever the case may be. If not, then clearly some information which would be fairly important to the public utilities review commission will not be before it. That is the question of whether or not the utility is providing power at too low a price to some major consumers, thus affecting other rates. And if so, then clearly some problems are presented to the Minister of Industry and Commerce when he discusses the location of major industries in Saskatchewan, when one of the factors is the power rate, and when he needs to be able to give some assurance of what the power rate is.

I don't say that's an insoluble problem. It may well be quickly explained. I am simply raising it so that we will be able to consider it when committee time comes. I am also unclear as to the application of the act to interprovincial long distance rates and the

Trans-Canada Telephone System.

I now want to turn to some other aspects of the legislation. I am not going to refer to individual sections, except to illustrate what I see as a couple of trends running through this particular act which I think are undesirable trends.

I will use the example of power. The rates which the power corporation charges depend largely upon the calibre of the directors, and the calibre of the management, and that is up to the government. There is no way that the public utilities review commission can influence that in any effective way, and accordingly, since the government makes the decisions, the government should be responsible for explaining those decisions.

Rates also depend upon the overall policies of who is served and with what quality of service. Those, too, are decisions not made by the public utilities review commission, but by the board of directors of the power corporation and the cabinet. Accordingly, they should explain their policies and how they affect rates. Rates depend also on the overall policy of profit or non-profit, the philosophy of profit or non-profit, being pursued by the corporation, particularly with respect to the capital investment program.

I think this is a point which I will want to pursue in brief compass, because it seems to me that the government opposite has, on a number of occasions, indicated that in its judgment these corporations should operate on a non-profit basis. The utilities commission appears to have been given other instructions, and this is rather key. It is to take into account, have regard to, the earnings necessary to ensure the financial health of the corporation, including the earnings necessary to finance a reasonable proportion of the corporation's capital investment program, in a manner consistent with sound financial practices.

Clearly, what the commission is being directed to do is to set rates which will cover not only expenses, but also a reasonable proportion of the corporation's capital investment program. I would assume, therefore, that the commission is being directed to set rates or to approve rates which will generate at least a small surplus which will be reinvested, i.e., a small contribution to the corporation's capital investment program. That seems to me to be at variance with what we have heard. I an not now expressing opposition to that particular principle. I am asking for clarification in this debate of whether that principle is to be pursued by the commission or whether the commission is to be given instructions to set break-even rates. And it's a fairly fundamental difference.

I am attempting to say, Mr. Speaker, that the big determinants of rates are the calibre and direction of the management, the policies of who is served and what rate of service, and the policy with respect to whether or not a profit is to be earned to make some contribution to capital expenditures. And all of those decisions are to be made by the government and not by the public utilities review commission. The cabinet should make these decisions; it should explain them; it should defend them to the public, and not content itself with having them asserted by the power corporation to a public utilities review commission.

The extent to which a corporation's rates should contribute to its capital investment program is a very real matter of debate among utility operators. I thought some members might be interested in an article on this issue in the July-August 1982 issue of *Policy Options*, which argues the case for operating utilities, and in this case, Ontario Hydro, without any foreign debt. Indeed, it goes even further by essentially arguing that

Ontario Hydro should conduct its affairs such that before long it would not have to borrow any money for capital investment.

I do not in any way want to repeat those arguments, save to say that that is a key question with respect to determining what the power rates are likely to be in the future. It's a question which must be asked by the government, decided by the government, and I would suggest, explained and defended by the government.

Now I want to move on to quite a different point, and that is that the procedures set out in this act are unfair. They are procedures designed to see that public bodies like the consumers' association do not appear before this public utilities review commission. They are designed to make it difficult and hazardous for any member of the public or any body representing consumers to appear before the public utilities review commission.

Note the nature of section 13 and the policy contained therein. If the commission makes a decision, and that decision in your opinion is wrong, flat wrong in law, and you have the temerity to appeal, as you are given a right to do, to the court of appeal, and the court of appeal says that you are correct and that the utilities commission is wrong, wrong in law, the bill specifically says that the utilities commission is not liable to pay any costs.

Think of the consumers' association attempting to upset a bad decision by the public utilities review commission, being able to illustrate to the court of appeal that the decision was flat wrong in law, and then having to pay all its own costs because it can get none from the public utilities review commission, which is not liable to pay any. It is this and other things I will note which appear to be part of a scheme to make appeal by ordinary customers or consumers' groups next to impossible.

I refer to you the general scheme of the act set out in sections 30 and 31 and the sections surrounding that. The commission will decide who can appear before it; there is no general right of appeal by the public to the public utilities review commission. No citizen and no consumers' group have the right to appear. The utilities commission decides who appears before it. Now a case can be made for that, since it might be possible that a very large number of people would put in appearances and hold up the work of the commission. Therefore, I don't totally oppose that sort of provision. But it obviously starts down the road of making it more and more difficult for consumers and consumers' groups to appear.

Then it goes on from there to make it even more difficult for consumers' groups to appear. It provides that the commission may appoint counsel, may appoint a lawyer for consumers' groups and then the commission may say who will pay that lawyer. Just consider that for a minute. A consumers' group appears and feels it doesn't have enough money for counsel; the commission can appoint counsel to facilitate its work and decide that the consumers' group has to pay that counsel. There is no provision which would, in any way, protect the consumer or consumers' group from being saddled with the costs of counsel it did not hire.

Moving on from that, there is nothing to protect a consumer or consumers' group from being saddled with costs, because the commission can decide who will pay the costs. We have noted that when the commission is wrong before the court of appeal it is protected in the act against paying costs. If the Consumers' Association of Canada is

wrong before the commission, it isn't protected. It may be saddled with costs. And the commission really doesn't worry too much whether it is saddled with costs because it's an agency of the Government of Saskatchewan. But an impecunious consumers' group will worry a good deal, and all the evidence that has been put forward about the operation of utilities commissions in other jurisdictions has indicated that consumers' groups are reluctant to appear because the costs are just too heavy.

There are a good number of stories recently about the consumers' group in Alberta deciding it wasn't going to bother appearing before the public utilities review boards in Alberta with respect to telephone rates. That indeed has been the history of consumers' groups in attempting to appeal to the CRTC (Canadian Radio-television and Telecommunications Commission) with respect to Bell Telephone applications, and I think they don't bother appearing now since they can't afford it.

So we have here a situation whereby the commission is protected from having costs charged against it, but consumers' groups are not only not protected against having costs levied against them, but they are not even protected against the commission hiring lawyers and saddling the consumers' group with the costs. One would say that it was a very venturesome consumers' group which will go very far with an appeal before this review commission that the group thinks the review commission doesn't want to hear, because the group may well land up with the costs of a lawyer which it didn't hire as well as all of its other expenses.

As I say, these sorts of provisions, designed to keep consumers' groups and the general public out of hearings, will scare off all but the most venturesome and, indeed, I would say the most foolhardy.

I wonder if any members opposite have looked at the general procedures that are provided for this commission. In some ways, the procedures are lax so far as civil liberties are concerned — lax to the point of being quite unacceptable.

The commission may make regulations but these regulations are not subject to the rules made by The Regulations Act. They are, therefore, not subject to any review by this legislature. We pass many acts providing for regulations and in those acts we are silent about what happens to those regulations, knowing that if we are silent they are subject to The Regulations Act. They go before the committee of this legislature to see whether or not there are abuses buried within them. Not so the public utilities review commission regulations, they are exempted from purview by the regulations committee of this legislature, and no reason has been advanced for that.

I invite anyone to read the sections 28 to 35 inclusive. Indeed, there are some others which I also invite you to read and to see whether or not you are satisfied with that type of legislation.

The commission can proceed in any matter that it considers convenient. It is not, in any way, hindered by any considerations of natural justice. No general direction of any kind is given to the commission as to how it should conduct its proceedings. It is not in any way constrained by the ordinary rules that govern courts nor I think should it be so far as evidence is concerned. The purpose is not to set up very formal procedures but somewhat informal procedures. But there ought to be contained in the act some general direction that it ought to adhere to the tenets of natural justice.

The commission is authorized to hold hearings in camera when it thinks it's in the

public interest. No other direction than that is given. It's also authorized to hold them when it thinks that confidentiality of records may be prejudiced. So, clearly, we're not thinking about confidentiality when we're talking about public interests. We're thinking about something else. What, I don't know. I would be exceedingly hard-pressed to know any reason why a public utilities review commission should hold a hearing in camera, other than to protect the confidentiality of business records. But there are some reasons, because the commission is given the power to hold these when it deems them in the public interest as well as when confidentiality might be interfered with.

The commission is given power to enter upon and inspect any building or any property. There's no nonsense about search warrants, none of the ordinary concerns which you and I would ask for when clothing any government agency with powers of that nature. Why that sort of power to enter upon and inspect any building or property without a search warrant? They can subpoena any witness. They can require the production of books. They can cite for contempt. Now, surely they should be able to subpoena witnesses. They should be able to require production of books. But when you combine that with the right for them to hold in camera meetings, you have a very wide and all-encompassing power.

This collection of powers is far too wide and I would invite members opposite to identify any other acts where this collection of powers exists. Sure, we have in The Game Act and in The Liquor Act power to enter buildings, but that's all for the preservation of evidence. And I want to know what evidence has to be preserved for review by a public utilities review commission. What evidence is likely to get away from them in the consideration of what power rates should be or telephone rates should be? It's not exactly the same as taking a deer out of season. And when you combine all those you reach the conclusion that the powers are too wide. They can call witnesses; they can force answers on pain of contempt proceedings; they can have secret meetings.

Now those powers are simply too wide. You may say, "Well, people of good judgment, people similar to the calibre of judges, will be named to the public utilities review commission. And the powers, therefore, will not be abused." And I might be mollified by that argument if I thought that only the commission was going to exercise those powers. But that's not what the act says. The act allows the commission to have a single commissioner exercise all of these powers — a single commissioner to have a hearing, in camera, subpoenaing witnesses, examining them under oath and forcing them to answer, to bring their books and papers, on pain of contempt.

And that would be bad enough, but you will say to me, "Well, these commissioners are going to have to break up their hearings and they're going to have some one, single member carrying on proceedings from time to time. And it's not unreasonable to give a single commissioner powers to have secret hearings and examine people under oath." But that isn't the end of it. The commission can authorize anybody — anybody— to have similar hearings, to have them in camera, to examine under oath, to force them to bring books, to force them to answer questions. All for what purpose? Surely, there need to be some proper safeguards in an act of this kind.

If these powers are needed — these very extensive powers — I think some explanation ought to be offered. I'm not here to raise a great number of red herrings, and I know that the commission itself will have to have a strong body of powers. I do suggest that when the commission is not sitting as a commission but only as a single commissioner or some other person they name, then the powers of subpoena and in camera meetings ought not to be exercised except on the express written consent of the commission. I

would go further; I would think of a court or perhaps the Attorney General, but at minimum we should not be passing legislation which allows a commission to appoint any person in Saskatchewan to administer oaths, hold meetings in camera, or force people to appear and bring their books and the rest. That legislation is not good legislation and needs to be corrected.

Mr. Speaker, I have made all the basic points I wish to make. I do not believe that this legislation will lead to lower rates. I believe it may well actually hinder the operations of some corporations, and the borrowing capacity of some corporations. I think it will discourage the government from fully explaining why it is proceeding in the way it is with respect to the structuring of, let us say, the power corporation, of the decisions it is making and their impact on rates. I believe it will effectively discourage citizen participation before the public utilities review commission because all the dice are loaded against the public before this review commission. I believe certain provisions in this bill violate accepted standards of civil liberties.

Because of all of those reasons, I propose to oppose the bill on second reading and to ask the government for explanations for some of the points I have raised when the bill reaches the committee stage. Thank you, Mr. Speaker.

Motion agreed to on the following recorded division, bill read a second time and referred to a committee of the whole at the next sitting.

YEAS — 42

Devine	Taylor	Andrew
Rousseau	Thatcher	Muirhead
Pickering	McLeod	McLaren
Garner	Katzman	Currie
Schoenhals	Smith (Swift Current)	Boutin
Hampton	Weiman	Bacon
Tusa	Hodgins	Sutor
Sveinson	Sauder	Glauser
Schmidt	Parker	Smith (Moose Jaw South)
Klein	Rybchuk	Caswell
Young	Gerich	Domotor
Maxwell	Embury	Dirks
Hepworth	Folk	Myers
Zazelenchuk	Johnson	Baker

NAYS — 7

Blakeney	Koskie	Engel
Lingenfelter	Hammersmith	Lusney
Shillington		

The Assembly adjourned at 8:55 p.m.