On section 13.

**V. Anderson**: As we look at section 13, which is procedure for fair representation of complaint, we notice that in the previous sections of this bill the minister was attempting to present a new approach and a new understanding. He has attempted to say, particularly in relation to natural justice, that they were creating a new awareness of possibilities for people to receive the justice that they deserve. In this particular section they have put forward some protections -- and I emphasize some -- for individuals in the workplace from the trade union and from their employers. However, the protections that they have put forward are only against the actions that are covered by the code itself.

As we know, in many actions that take place in our lives, the technical or legal regulations are not always the main problem. The main problem may be one of misunderstanding, of different jurisdictions or of communication.

In other areas this Legislature has seen fit to create the position of the ombudsman, so that when the regular systems break down and communication is not adequate to look at the root causes of the difficulty, there is the opportunity for this to met and countered.

There are many difficulties that people face in dealing with situations -- not only difficulties with the employer or with the decisions or actions of the union, but also difficulties with the actions of the labour board itself, the ministry or the departments of government.

These actions leave the individual unable to cope, because most employees are not in the position financially, physically or emotionally to take on whatever system happens to be turned against them, even if that system has turned against them by accident and not by design. It's very difficult for an individual who is cut off and has the feeling of being ostracized to begin to put forth the opportunities they need.
There needs to be in place some kind of opportunity for people to have their voices heard, to express themselves and to get others to join them. They need to find someone who will stand on their behalf as their advocate and make sure that the circumstances are looked at from all sides and all positions and are dealt with fairly, so they can be heard and feel that their needs have been considered.

We realize that in the code that this is attempting to replace, there was the opportunity -- although not proclaimed -- for the ombudsman position. I'm sure the fact that it was in the act had a detrimental effect, because people were aware of something they could have called on. Even in the explanations of that position, the concerns and items that needed to be taken into consideration were clearly described. In the activities of the Labour Relations Board itself, they would know that these conditions were there. They would be able to take these positions into account in their considerations, and they would be able to operate as if they were there and these positions were in place. The very fact that this opportunity was there and could have been proclaimed when the need arose was a very important position.

It is important that we express to the people of this province and the individual worker, however humble or great their position might be, that there is an opportunity for their positions to be heard, clarified and fairly dealt with. As we have seen in this particular act thus far, there are difficulties in the definitions. We have seen difficulties in the purpose of this act and each of the clauses we have dealt with in some detail; there is a lack of clarity as to the well-being of employees, particularly within whatever system they may work.

It is important that we take the concerns of these people seriously. As I indicated earlier in this discussion, the individuals who came into my constituency office and who I came to know in their circumstances even prior to becoming a member of the Legislative Assembly were those people who had gone through the system that was available to them. They had tried to deal with the appeals that were put before them and found that they got caught up in the bureaucracy. Because of the bureaucracy, not necessarily the evil intent of any person, there was no hope for them to resolve their circumstances. Not only was this a crisis in the individual person's life, but it became a crisis in their family life for their children, spouse and all who were closely related to them. It became a crisis within the community itself, for many lost their employment opportunities and their self-confidence, and many were forced into the other government support system when they should have been given the opportunity to clarify their situation and renew their lives.

In this act there must be an opportunity for these people to come through whatever difficult circumstances they find themselves in and have an opportunity and a channel by which they can proceed after a breakdown in employment, after a confrontation with the union, the employer, the Labour Board or the government to find a way to bring the pieces back together again. They must have some kind of help available to them in those circumstances. It seems to me that unless we put that kind of concern, thoughtfulness and opportunity into place, we are simply dealing with rules and regulations, not with the lives of people. It's the lives of these people that we must be concerned about, and who this bill is here to serve -- not that people must be dictated to or have to conform to the laws within the bill itself.

Naturally the laws need to be legal, and we have to take them into account. But when we discover in actual circumstances that the laws or the regulations are unjust, and when the people who enforce the regulations admit that what they're doing is not for the well-being of the people for whom they are doing it, they have no choice, because that's what the regulations say.
Time and time again, hon. Chair, in dealing with the social services system, people have been unable to get their needs met and have come to the point of a tribunal. In the tribunal they have sat down with the representative of the government and with their own advocate, and they have looked at the picture in total framework. Time and time again the representatives of the government have had to say that not only do we have to act upon this law, but we have to act upon the interpretation of the law -- namely, the regulations that have been passed down to us. Time and time again in that tribunal all three members -- the representative of the government, the representative of the individual and the neutral chair -- have read the act for themselves and have discovered that the regulations by which the workers were to operate in that circumstance did not meet the needs, and the act itself begged to be interpreted much differently. Time and time again the very actions, which technically were decided upon according to the regulations and the rules when they were reviewed in the common sense of an interrelated dialogue to look at all the issues in question, were overturned. Those judgments were upheld, and they received the compensation and the justice they deserved.

That kind of opportunity is not given here in "Procedure for fair representation complaint." The material that follows does not cover the circumstances that need to be covered. They cover in part what relates to trade union actions or employers' actions; but they do not cover the actions of the labour board itself and its decisions, nor do they cover the actions of the bureaucracy of the ministry in which they are so often caught.

Therefore, hon. Chair, I would like to make an amendment to section 13, by the addition of the following subsection (3):

"The Lieutenant-Governor-in-Council shall appoint a person to be called the labour ombudsman, who shall hold office during good behaviour for a term of five years, and for additional terms the Lieutenant-Governor-in-Council appoints, and be paid the remuneration the Lieutenant-Governor-in-Council determines."

Hon. Chair, there's an extra copy for the hon. minister, if he would wish to receive it.

"13(4) The labour ombudsman has the power to investigate any decision or recommendation made, or act done or omitted, relating to a matter of administration, including the merits of a policy, and affecting any person, by (a) any board, commission, council or other tribunal under this act or any other act administered by the minister, or any branch or agency of the Ministry of Labour...."

The Chair: I should have advised the member that under standing orders his time has expired. Would the member please take his seat.

Hon. M. Sihota: Hon. Chair, I have no difficulty with the hon. member making the amendment. I'll speak to it in a second whether it's in order or not. There's certainly no need for him to read it. We do have a copy of it now. It goes on for some five pages, I believe. I don't think it's necessary to have it read if it's filed. I'd like to raise a procedural issue, but....

An Hon. Member: He has the right to read it.
The Chair: Hon. member, it is customary to table your amendment -- and the member is permitted to make a statement. The minister indicated that he is prepared to accept the amendment without a decision with respect to it being in order or not. There has been intervening debate. This would allow the member to continue if he would like to speak to his amendment.

V. Anderson: This particular amendment is very similar to that which has been a possibility in the last two labour bills in this province. I believe it was originally introduced in the labour bill presented by the then NDP government in 1973. Some of the comments that were made about it at that time are particularly appropriate. I quote from Hansard on the validity of this particular amendment.

Hon. M. Sihota: Point of order. Before we get into an extensive speech on the amendment, perhaps it would be appropriate for the Chair to determine whether or not the amendment is in order. I would at least like to have the opportunity to put to the Chair the argument that it is not in order.

Section 13 lays out a procedure with respect to complaints made under the provisions of section 12. It does not deal with any matter that in any way relates to complaints about the Labour Relations Board or the ministry. The purpose of the amendment goes far beyond the scope of section 13. It is not relevant or tied in with section 13. It deals with a new topic. The bill has been debated in principle already. At that time I believe the hon. member did raise this issue. But from a procedural point of view I cannot see how it has any relevance to the duty-of-fair-representation provisions as they are contained in the findings made by the board. This goes beyond the duty of fair representation and talks about the powers of the ombudsman to review the legislation. "The ministry, any board, council or other tribunal that is established under this act, any act administered by the ministry, any branch or agency of the Ministry of Labour, or any officer, employer or member thereof..." So it goes well beyond the scope of this section, and I would argue that it's not relevant.

The Chair: Thank you, hon. minister.

Hon. member, under your section 13(3) you make reference to the need for an ombudsman. Of course, as all members know, any matter that involves an expenditure by the Crown has to come in the form of a message from the Lieutenant-Governor. On that point alone the amendment would not stand the test of being in order, and I would so rule that it is out of order.

G. Farrell-Collins: It's perhaps unfortunate, I guess, that there wasn't some provision made in the bill for that type of representation. I think the words of the member for Vancouver-Langara were very wise and appropriate. All I can say is that it is unfortunate that there is not a provision somewhere in section 13 for that type of amendment, but so be it. That's the government's choice, I guess. We've raised our opposition and proposed our amendment.

V. Anderson: Hon. Chair, I appreciate your ruling and understand your particular reason for that ruling. But I would also urge the minister to reconsider, not the ruling of the Chair but the need for this kind of provision. I would urge that this kind of provision be made available as the act proceeds, because it could be made not in the fashion that it was presented here but simply by moving to add the concerns related here to the present Ombudsman Act. I would urge the minister to consider and discuss that, because there is more than one way of dealing with the essence of what is presented here so that these needs could be tied in and the needs of individuals could be met. Would the hon. minister be willing to look at items within this act whereby the concerns of people related to the ombudsman concerns would
be addressed, perhaps by tying them in with the present Ombudsman Act, which is available for us to use?

I'd be interested, if the hon. minister is willing to consider that.... If so, we would know that's forthcoming, and we could be assured that that is not overlooked.

Hon. M. Sihota: On the need for an ombudsman, it should be noted that there is an act that deals with the establishment of the office of the ombudsman. The act allows the ombudsman to look into the affairs of the Ministry of Labour, as the ombudsman has done from time to time. The act also allows the ombudsman to make inquiries of the Industrial Relations Council, as it is now, and it will with regard to the Labour Relations Board in the future. The individual must first exhaust the remedies within this legislation before they can go to the ombudsman, but the hon. member can rest assured that the ombudsman has jurisdiction to take a look at the activities of the Labour Relations Board and the ministry. Therefore I would suspect that he would appreciate that that should provide him with a measure of comfort.

C. Serwa: Speaking on behalf of our Labour critic, the feeling in our caucus is that this section cannot be amended, because it is fundamentally flawed. There is currently an obligation on unions to reply to complaints from their individual members. Apparently this section removes that need for response of a union.

Hon. M. Sihota: Perhaps I can just go back a bit. There are sections that require trade unions to pursue grievance arbitrations because they wish to avoid a fair representation challenge. Consequently, what happens is that grievance arbitrations which really should not be going forward do go forward, and because they do -- and they really shouldn't -- they first of all result in unnecessary cost and expense to both employers and employees. That's a good enough reason to not allow it. Second -- and I think this is an important point -- they also cause a lot of cases that really should not be going through that process to be a part of that process, and that tends to disease the relationship between management and labour. Management gets irritated that cases that clearly shouldn't be there are there, and labour goes through a half-hearted approach in terms of representation because they wish to avoid a fair representation challenge. This clearly is not conducive to good industrial relations, and as I said, it results in additional costs for all parties.

All parties recognize that this was a problem under the previous legislation, and all felt that there had to be a fine-tuning of the balancing of the rights here: on the one hand, the right to make sure that the cases that should be heard are indeed heard, regardless of the cost factor; and on the other hand, the right to make sure that cases that are somewhat borderline or frivolous are not going forward, because they're not conducive to good industrial relations.

The process established in this section provides a fair and expeditious adjudication of fair representation complaints, such that trade union members will be adequately protected and unmeritorious grievances are less likely to be pursued. A number of submissions were made to the special advisers by employers or employer organizations, requesting changes to the administration of this provision to simplify the hearing process and reduce the necessity of employer involvement in disputes between unions and their members. I highlight that point, because the members should know that this was as much a thrust from employers as it was from employees.

[M. Farnworth in the chair.]
It's interesting to note that under the applications for duty of fair representation in the past, we were indeed seeing a considerable number of applications. Let me just bring that information to the attention of the hon. member. For example, in 1987 there were 81 complaints; in 1988, 105 complaints; in 1989, 79 complaints; in 1990, 94 complaints; and in 1991, 102 complaints. That's a lot of complaints, probably in the neighbourhood of 400 to 500 over that five-year period. But the number of orders granted with respect to those complaints were as follows: only 6 out of 81 in 1987; 7 out of 105 in 1988; 3 out of 79 in 1989; 1 out of 94 in 1990; and 4 out of 102 in 1991. So the percentage of the cases that were actually granted, that were deemed to be meritorious at the end of the day, was a fraction of the number of cases that were actually going before the board, and that tends to reinforce the point that I made.

Since there are obviously some cases that are meritorious, it is important that the procedure recognize that. That's why the **prima facie provisions** which appear in 13(1)(a) are there: to make sure the ones that are meritorious get through. In this way we can reduce some of the workload of the Labour Relations Board, have the cases come forward that ought to come forward, weed out the ones that disease the relationship and provide some cost assistance to all the parties.

I understand the reason that the Social Credit caucus may have difficulty with this provision inasmuch as it varies significantly from previous provisions. But I would hope that the hon. member now understands the reasons why we have chosen to proceed with it.

**C. Serwa:** I thank the minister for that information. In tendering that, it brings to mind the question of how many of those cases were initiated by a worker, with respect to the union representing that worker. I don't know if the breakdown in statistics divulges that. If it doesn't, it's still a substantial question.

Again, my concern here is with respect to the individual worker and the roadblocks that this section appears to put in front of that worker to develop and meet a lawyer's standard of a **prima facie case** before the union is required to respond. First of all, that is difficult, because only the union possesses the full information on how it handled the situation which led to the complaint, and it's not available to the worker in this particular case. So if we can focus on this element rather than simply on the employer, we should look at it from the perspective of the worker and the union.

The Chair: The minister.

**Hon. M. Sihota:** Thank you, hon. Chair. It's a pleasure to see you in the chair.

With regard to the question from the hon. member, all of the applications that I referred to were brought forward by employees. You can see that there are quite a few, but you can also see that quite a few were unmeritorious.

With regard to your comments about **prima facie evidence**, I don't think you should assume that because all the information is in the possession of the union, as you suggest, that would prevent a **prima facie determination**. Employees obviously get to put forward a **prima facie case** as well. I would think that given that these are somewhat employee-driven, the board would look at the **prima facie evidence** from both sides before it considers whether or not the case discloses such evidence so as to serve a notice of the complaint on the trade union. So I think it does provide the protection that you suggested it wouldn't.
C. Serwa: There seems to be a substantial diversity in standards here, where the union member appears to have roadblocks in front of him or her in this particular section, but those same roadblocks do not exist in the case of the union's position against employers. The union has a much stronger position, and it's not necessary to develop the same degree of a *prima facie* case. In our opinion, it indeed shows a substantial amount of bias toward the central agency or the central control of the union body.

Hon. M. Sihota: Perhaps I didn't make it clear enough. If you read 13(1), it says: "If a written complaint is made to the board that a trade union, council of trade unions or employers' organization has contravened section 12, the following procedure must be followed." In other words, it's not for a trade union to make the *prima facie* case; it's for an employee to make that case. Secondly, once that case is presented, then it causes the board to investigate. Thirdly, once the investigation has commenced, then their determination is made as to whether or not there should be a hearing.

That is preferable to the current situation where there is no *prima facie* opportunity to make the case, so as to weed out the cases. Secondly, it means that an employee, under the current situation, would have to make their case without the benefit of a preliminary investigation and in front of the whole board as if it was a full hearing, with all the attendant costs. This actually assists employees, from that perspective, with regard to this provision.

L. Stephens: If the employees who may be putting forward this *prima facie* case are not skilled or have difficulty, would the minister provide counselling or assistance, as is done at Workers' Compensation?

Hon. M. Sihota: They are assisted, hon. member, by an investigating officer appointed by the board.

F. Gingell: I must admit that I didn't see anything in section 13 about an investigating officer. Is that a requirement set out by the regulations? Or is it in some other portion of the act?

Hon. M. Sihota: I refer the hon. member to section 14. I guess this is my frustration with the opposition. They don't always seem to do their research. Section 14 deals with the opportunity of the board to appoint an officer to inquire into a complaint. So if you read 14, you'll see that there's assistance provided.

F. Gingell: I'm just fascinated by this. The minister couldn't respond to the question until he had been advised by his assistant. I find your remark most uncalled for. You had to respond. You had to get advice. Anybody watching this House on Hansard television would see, hon. minister, that you have your own standards for your own behaviour and different standards for other people.

Hon. M. Sihota: That's a point of debate, but you're wrong. I'll tell you something else, hon. member, if you want to get into that kind of stuff. I've sat here for four days presenting example after example where your caucus has been able to do the necessary research. I've listened to your Labour critic suggest in this House directly that his research staff have been in frequent contact with the B.C. Federation of Labour.

G. Farrell-Collins: Point of order. The member has already stated that he is bringing a point of privilege in that regard before this House. He's trying to go around the rules of this House to bring up his petty little concerns. He's acting very much the same way he did with the Kelowna Chamber of Commerce when they were here, when they called him rude.
The Chair: We are on section 13. I would ask all members to be relevant to that section.

Hon. M. Sihota: To make it clear, there's a section that deals with the procedure for fair representation complaints. It sets out a procedure that the most simple-minded people in British Columbia can read. It seems to me that the opposition cannot take the time to read one section and compare it to the next in order to come to an understanding of what's contained in the legislation. It has demonstrated over and over again it is one of the most ineffective and inept oppositions in the history of this province.

G. Farrell-Collins: Point of order. The minister is clearly not relevant to the debate. If his opposition had been a little more effective, we wouldn't have had the type of government we had last time.

The Chair: Please, hon. member, address your remarks through the Chair.

G. Farrell-Collins: If the Chair was fair, we'd be glad to.

The Chair: The rulings of the Chair are not subject to debate -- standing order 9.

F. Gingell: Perhaps the minister could advise me on a very simple question, which I'm sorry I don't know the answer to. Would the panel that would be set up be a child of the board? Or does it consist of board members? Would it only consist of board members? Or would the board be authorized and empowered to appoint the panel from non-board members?

Hon. M. Sihota: It's a panel of board members.

K. Jones: I rise on a point of order. There doesn't appear to be a quorum in the House.

The Chair: Will the House come to order. There appears to be a quorum now.

Section 13 approved.