

Martha's Monthly
November 2006
Turning Back Time only happens on Superman
(and in Alberta under Bill 46)

Martha loves Halloween so this time of year is a special treat for her. The best part about Halloween, besides the candy doled out at every door, is that you can be whoever you want to be. Martha always dresses as a superhero! She has often daydreamed about **which super powers** she would choose were she to be a superhero. If she could only choose *one* power it would be that one that Superman has when he flies as fast as he can, faster than light even, backwards around the earth in order to turn back time. I mean **who hasn't wished they could turn back time every now and then?**

Superhero powers of turning back time might end up being a little problematic in real life, though. Say you wanted to turn back time so you could erase the time you finished off that whole bottle of tequila with Marco, the waiter you met on vacation in Mexico during your first girls-only holiday when you were 19 (and who amongst us doesn't have a "Marco and tequila" story?) The problem is your time travel may take you back to pre-Marco or even pre-Mexico but might also go too far back and make you wind up being a pimply-faced 14 year old again? This is the point at which Martha decides that maybe turning back time isn't all it's cracked up to be.

Alberta Energy Minister Mel Knight has also been thinking about turning back time lately. In summer it came out that the Energy Utilities Board (EUB), illegally hired private investigators (spies) to pretend to be landowners in order to infiltrate a landowner's group that was effective in their efforts to block a transmission line in central Alberta. Two scathing reports about those activities were released in week. The first was the Justice Del Perras report (see [Perras report](#)), which found the EUB spies actions of listening into conference calls to be "repulsive". Later that week the Office of the Information and Privacy Commissioner determined "the Alberta Energy and Utilities Board (EUB) contravened the Freedom of Information and Protection of Privacy Act (FOIP) when it hired private investigators to monitor proceedings at Rimbey, Alberta" (see [OIPC report](#)). Minister Mel must have read those reports and really wished he could fly backwards and undo that snafu.

But Minister Mel has no powers to turn back time. Well, he didn't until he introduced Bill 46, the *Alberta Utilities Commission Act*. That piece of legislation would fundamentally alter the way energy regulatory hearings are held. It would restrict who had to be notified about a hearing, it would restrict who could speak at a hearing, and it would restrict landowners from having counsel represent them in those hearings. But most absurdly it would be made retroactive to June 1, 2003, effectively turning back time and allowing this government and Minister Mel Knight to pretend like the spies episode never happened.

According to the Environmental Law Centre, “The retroactivity of this provision will impact any pending legal challenges of the EUB decisions that relate to the interpretation of section 14(3) of the HEEA (Hydro and Electric Energy Act).” In fact, there is a *pending appeal* about the very transmission line that led to the spy incidents. On June 8, 2007 Court of Appeals Justice Carole Conrad, in a surprise move, granted the Lavesta Area Group of landowners the right to appeal every jurisdictional and legal issue they had raised against the AltaLink transmission line. (For a fascinating story detailing the AltaLink debacle read Andrew Nikiforuk’s piece in [Canadian Business](#)) AltaLink, seeing their business plan slipping away, began to claim that if they did not get approval for that transmission line the lights in Calgary would go out.

So, facing some nasty heat in the Court of Appeal, a damning report from Alberta’s privacy commissioner about illegal spying, and some over-the-top pressure from the private company that wants to erect that transmission line in central Alberta the Alberta government decided to fly really fast backwards to turn back time.

The government argues, in a fact sheet that they have just produced, that the retroactive clause is not sinister but “is included to correct an inconsistency in existing legislation.” (See [Government Fact Sheet](#)) The uproar over Bill 46 in rural communities has started to catch the eye of the government. They have begun to make statements that democratic rights are not at stake and the retroactivity of the Bill is administrative. Seems a lot of people don’t believe them. Here are some of the leading arguments against Bill 46.

The Pembina Institute issued a letter to the Premier calling on him to reconsider Bill 46 and they pointed out that many people are concerned that this Bill will trample rights:

“From the perspective of many landowner groups, environmental organizations and other stakeholders, Bill 46 is another indication that their legitimate concerns about energy development and their democratic right to participate in important decisions that affect them are not respected by the Government of Alberta. This perception is reinforced by the fact that the Bill contains a clause which makes an amendment to the Hydro and Electric Energy Act retroactive to 2003 and would, if passed, explicitly remove the current right to contest whether transmission lines that have already been proposed and have come before regulatory hearings are actually needed. In other words, this section changes the rules mid-way through the game for stakeholders who have participated in good faith in regulatory hearings under the existing legal regime.” ([Pembina Institute letter](#))

The Environmental Law Centre wrote a nine-page letter to Premier Stelmach pointing out the clauses of the Bill they saw as problematic. They highlight limits on public participation as being most troubling (see [ELC letter](#)). The Alberta Liberals have spoken out against the Bill and argued that the democratic participation rights of landowners are at risk ([Liberal's release](#)). The Alberta Greens have been vocal in their opposition to Bill 46 because of the risk to democratic rights and public participation in hearings about environmental issues ([Greens' release](#)). If you are an insomniac you may want to try reading the bill yourself at [Bill 46](#).

On November 15, 2007 Bill 46 will receive Second Reading, which means it will be one step closer to law. We need to stop this bill in its tracks.

Please take a moment right now to forward on this letter to the Premier, Minister, Opposition, and all your friends, family, and even that guy on Facebook that you didn't have the guts to ask how the heck you knew him. Do it now. Because by the end of the year the Progressive Conservative government would like to turn back time and none of us want to be pimply-faced 14-year olds again!

Copy, and add to, the following letter then [email](#) (by clicking "email" your email program will open automatically) it to: premier@gov.ab.ca, grandeprairie.smoky@assembly.ab.ca, edmonton.goldbar@assembly.ab.ca, edmonton.calder@assembly.ab.ca, marthasmthly@yahoo.ca

Nov. 15, 2007

Premier Stelmach
Legislative Assembly

Re: Please change Bill 46

Dear Premier Stelmach:

I am particularly concerned about a number of the sections of Bill 46 and wish to register my discomfort with this Bill. I understand that it is due to receive Second Reading today and I ask your government to take the time to make the fundamental changes to the Bill that are needed.

While I agree with dividing the EUB, I am opposed to many of the sections that deal with who is deemed to have a "material concern" with respect to proposed transmission lines and who would be able to make presentations to hearings on proposed energy developments. I believe that an open and transparent system is needed and I do not see openness and transparency in either the EUB at present or in Bill 46 as it stands. I am particularly concerned that changes will impact the current appeal by Lavesta Landowners group.

Please make changes to Bill 46 in order to protect Albertan's rights to be heard in development application hearings before the Board and to ensure that the pending legal appeal of Lavesta can be heard. It is essential that the democratic and legal rights of Albertans are paramount in this process.

Sincerely,

Your name and address.