Legislative Assembly of Alberta

The 27th Legislature
First Session

Standing Committee
on
Health

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9:05 a.m.

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Standing Committee on Health

Horne, Fred, Edmonton-Rutherford (PC), Chair
Pastoor, Bridget Brennan, Lethbridge-East (L), Deputy Chair

Dallas, Cal, Red Deer-South (PC)
Denis, Jonathan, Calgary-Egmont (PC)
Fawcett, Kyle, Calgary-North Hill (PC)
Notley, Rachel, Edmonton-Strathcona (NDP)
Olson, Verlyn, QC, Wetaskiwin-Camrose (PC)
Quest, Dave, Strathcona (PC)
Sherman, Dr. Raj, Edmonton-Meadowlark (PC)
Swann, Dr. David, Calgary-Mountain View (L)
Vandermeer, Tony, Edmonton-Beverly-Clareview (PC)

Bill 24 Sponsor

Jablonski, Hon. Mary Anne, Red Deer-North (PC)

Department of Justice and Attorney General Participants

Cindy Bentz	Public Trustee
Rick Bowes	Researcher, Office of the Public Trustee

Department of Seniors and Community Supports Participant

Brenda Lee Doyle	Director, Office of the Public Guardian

Support Staff

W.J. David McNeil	Clerk
Louise J. Kamuchik	Clerk Assistant/Director of House Services
Robert H. Reynolds, QC	Senior Parliamentary Counsel
Shannon Dean	Senior Parliamentary Counsel
Corinne Dacyshyn	Committee Clerk
Erin Norton	Committee Clerk
Jody Rempel	Committee Clerk
Karen Sawchuk	Committee Clerk
Rhonda Sorensen	Manager of Communications Services
Melanie Friesacher	Communications Consultant
Tracey Sales	Communications Consultant
Philip Massolin	Committee Research Co-ordinator
Stephanie LeBlanc	Legal Research Officer
Diana Staley	Research Officer
Rachel Stein	Research Officer
Liz Sim	Managing Editor of *Alberta Hansard*

9:05 a.m. Wednesday, September 24, 2008

[Mr. Horne in the chair]

The Chair: Good morning, everyone. We have Mr. Denis on the phone. Good morning, Jonathan.

Mr. Denis: Good morning, Mr. Chair.

The Chair: Thank you all for being here again today. We have an important agenda today. I'm not sure that it will actually take us until 4 p.m. We certainly have up till that time if we need it, but there's the possibility that we could finish sooner. I guess we'll know by later this morning whether that's going to be possible or not.

I'd like to begin just by going around the table and giving members as well as LAO staff an opportunity to introduce themselves. We'll start with Ms Pastoor.

Ms Pastoor: Bridget Pastoor, MLA, Lethbridge-East.

Mr. Fawcett: Kyle Fawcett, MLA, Calgary-North Hill.

Mr. Quest: Good morning. Dave Quest, MLA, Strathcona.

Mr. Dallas: Good morning. Cal Dallas, MLA, Red Deer-South.

Mr. Olson: Good morning. Verlyn Olson, Wetaskiwin-Camrose.

Mr. Vandermeer: Good morning. Tony Vandermeer, MLA for Edmonton-Beverly-Clareview.

Mrs. Kamuchik: Good morning. Louise Kamuchik, Clerk Assistant, director of House services.

Dr. Massolin: Good morning. I'm Philip Massolin. I'm committee research co-ordinator, Legislative Assembly Office.

Ms LeBlanc: Good morning. I'm Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Dean: Shannon Dean, Senior Parliamentary Counsel.

Ms Friesacher: Melanie Friesacher, communications consultant, Legislative Assembly Office.

Dr. Sherman: Good morning. Raj Sherman, MLA, Edmonton-Meadowlark.

Dr. Swann: Good morning, all. David Swann, Calgary-Mountain View.

Ms Norton: Erin Norton, committee clerk.

Mrs. Dacyshyn: Corinne Dacyshyn, committee clerk.

The Chair: Thank you. I just wanted to mention that Erin will be taking over as clerk for this committee in the next little while. I guess there is a bit of a transition under way for Corinne. We're very sorry to lose you, Corinne.

Mrs. Dacyshyn: I'll still be here.

The Chair: You'll still be here, and we welcome you, Erin. We look forward to working with you.

A couple of items in follow-up from the last meeting. Dr. Swann, you had asked about the capacity for the Legislative Assembly Office to support members' attendance at meetings via remote video technology. I'm advised that the LAO has looked into this and that based on their available resources at this time, they wouldn't be able to support meetings via remote video conferencing. Teleconferencing continues to be an option although I certainly realize it's not ideal. I'm advised that the LAO is looking into what might be able to be done in this regard in the future, and they'll keep us up to date. I'm not sure of the exact issues, but I suspect it has to do with both technology and perhaps budget and some other considerations as well. So we'll continue. But I think that was an excellent suggestion at the last meeting, and it's something we need to keep in mind and hopefully work toward.

Again, just a reminder. Because of the fact that we're on *Hansard* here and the proceedings are broadcast, if you can please leave your BlackBerrys some distance from the microphones.

We'll begin, then, with approval of the agenda. Can I have a motion to approve the agenda, please? Moved by Mr. Quest. Any discussion? Changes? Those in favour? Carried. Thank you.

The next item, number 3, adoption of the minutes from our meeting of September 10. I hope you've had an opportunity to review the minutes. Can I ask for a motion, please, to approve the minutes?

Mr. Denis: I so move, Mr. Chair.

The Chair: Mr. Denis. Thank you. Any discussion, corrections, additions, deletions to the minutes? Seeing none, those in favour? That's carried. Thank you.

Item 4 is Supplementary Documentation. In your package – and I realize that the materials have come to you in a couple of installments since our last meeting – you'll see that there is additional information provided by the Royal Bank of Canada. They're elaborating there on some of the additional points they made in their presentation to the committee at the last meeting. The Alberta Mental Health Patient Advocate office has provided additional information, as has Alberta Seniors and Community Supports.

I should have noted earlier – sorry – that we do have staff here again from Seniors and Community Supports and the office of the Public Trustee. They're available to answer any questions that we may have as we move through our discussion of the issues identified in that focus issues document. I just wanted to let you know that they're available. Thank you for being here.

Item 5 is just a follow-up on the discussions at the last meeting and the presentations. You'll recall that we made a motion to invite the Canadian Bar Association north to appear. What I'm advised by the clerk is that they were unable to provide a formal written submission due to time constraints. They have submitted to us written notes of a meeting of the CBA committee to review Bill 24. My question as chair, then, on your behalf was: can the comments of the committee be taken by our committee as the position of the Canadian Bar Association north? They were unable to assure me that that's the case. I'm not sure, but this likely has to do with internal processes of getting the committee's deliberations approved as policy or position for CBA. As chair, then, I felt that the attendance of the individuals on the committee was not required today because they couldn't provide that confirmation that their views were actually representing the Canadian Bar Association north.

What we do have are the written comments of the committee to review Bill 24. The clerk has circulated those to you. I'm advised that the practice last year when committees received submissions subsequent to the due date was that the committee then would make a decision as to whether or not to accept the submission. I'd like to suggest to you that we do accept the submission for information. You know, my feeling is that any additional information as we go through this is potentially helpful to us as a group and to individuals.

I think it would be appropriate, if you agree with that, that we pass a motion here accepting the late written submission from the Canadian Bar Association north. Mr. Olson moves that, then. Any discussion on that? Any concerns? I just felt that it would have been inappropriate to have a committee here if they couldn't assure us they were representing the association. It wasn't the same thing. Please talk to me after if you have any concerns about that judgment call, but that's what I felt you would want and support.

The motion, then, is that

> we would accept the late written submission from the Canadian Bar Association committee to review Bill 24.

Mr. Olson, would you be amenable to that change? Okay. Those in favour? Opposed, if any? Carried.

We can now move into the main focus of our meeting today, and that's to begin our deliberations on what we've heard and our own observations and comments, potentially, to the Legislative Assembly on the bill. You'll note in the meeting materials a document that was prepared by Stephanie LeBlanc of the LAO research office. It's entitled the focus issues document regarding Bill 24. I'm sure you'll agree with me that by the number of issues that are covered there, this is reflective of some very careful listening to what we've heard over the last little while.

I'm going to ask both Dr. Massolin and Ms LeBlanc to briefly take us through what they've developed here. Then what I'm going to suggest we do is go back through the document – you'll see that it's been divided into sections – and proceed with a discussion in the committee, the purpose being to try to identify potential areas where we may want to make recommendations to the Assembly. So we're kind of building a list as we go, using this document as a guide for the discussion. Just before we do that, then, does that seem reasonable?

9:15

Dr. Swann: Sorry, Mr. Chair. Is that number 5 on our agenda, the summary of focus issues?

The Chair: It's 5(b).

Dr. Swann: Thank you.

The Chair: Okay. So take it away.

Dr. Massolin: Thank you, Mr. Chair. I'll let Stephanie take this.

Ms LeBlanc: Sure. I'll just briefly explain what the report has to offer this committee and how we'll move on from here. This is the focus issues document. Basically, it sets out the issues that have been raised by committee members, by the public, and by the stakeholders in their written submissions and also in oral presentations and the question periods following oral presentations.

It's structured in section 2 there to follow the bill, so issues haven't been ranked by importance or prioritized in any way. That also means that sort of the broader policy issues as well as the more discrete and specific issues will be mixed in together. Basically, I'm here to answer any questions you might have as we go through the issues in terms of who brought forward the issue and any more explanation for what the issue involves.

I'll hand it back to you, Mr. Chair.

The Chair: Okay. I just want to be clear here. This is really our time now to start considering what we may want to propose to the Legislature. We're not kind of engaging in an evaluation of whether all of the points raised were valid or what our response might be to them. The idea is to use the document as a guide to build our own list. As an example, you know, in my preparation for the meeting I used this plus my own notes, and I tried to identify some areas where I think this committee should be making recommendation. On the ones where I personally didn't feel it was germane, I probably won't speak to those in this meeting unless somebody else brings up that point and we have a bit of a discussion about it.

If we go through these one question at a time, it's going to take us a long time. We're kind of relying on you, Stephanie, to give us the gist of, in the first area for example, supported decision-making and co decision-making, sort of the salient points, what the key issues identified were. Many of these questions relate to one another. Then we would move into a committee discussion about that topic area if that's acceptable.

Bridget, is that all right with you?

Ms Pastoor: Yeah.

The Chair: Okay.

Ms LeBlanc: Well, I'll look at the first issue here, then, and that's the supported decision-making and co decision-making. I think the broadest issue that is to be dealt with here is whether these should in fact be included in the bill. Supported decision-making is the lowest here, and then co decision-making is an actual court application. One of the submitters suggested that perhaps co decision-making be incorporated into a guardianship application, where an application for guardianship is made to the court. Then there is the possibility of the court determining that capacity has not reached the state where a guardianship order would be necessary, and a co decision-making order would suffice in that circumstance.

Basically, should supported decision-making be included in this bill, should co decision-making be included in the bill, and if co decision-making is an appropriate inclusion in the bill, whether it should somehow be encompassed by the guardianship application and whether there should just be one application with two options in the court's discretion to incorporate into that order. Those are the basic issues that arise out of that co decision-making and supported decision-making issue.

The Chair: We'll just kind of invite discussion on that area, then.

Ms Pastoor: One of the strong things that this bill, in my mind, is meant to do, the first thing, is protection for the people that are being taken advantage of. The reason I would like to see some of these included in the bill is because of paramount importance to me is the fact that there is a protection for people. As I think I've mentioned before, often for the vulnerable elderly or, in fact, those that are either mentally or physically handicapped in some fashion, the people we have to protect them from are their families. It's quite a difficult thing to do, but if it's included in the bill, then I think that that will not only help the courts, but it will also help the people that agree to be a guardian, that they understand what the expectations and responsibilities of their duties are.

The Chair: Anyone else on this area?

Mr. Olson: Well, maybe I can just offer a couple of comments. I still have some reservations about the supported decision-making and the co decision-making just because I think that working with the legislation after it's passed, there's greater complexity here. I can see that there would be situations where it would be useful, but I think that the personal directive is probably underutilized at this point, and a personal directive could catch a number of these situations as well. I'm kind of on the fence on this because I don't want to discount the motivation for having this in the legislation, but I'm concerned about having to deal with it afterwards and the complexity of it. I know that there is some reference in the response to: this is not a three-tiered approach; it's a continuum. But people are still going to have to figure out where they fit and kind of put themselves in this compartment or that compartment, I think. So I'm still waiting to be convinced.

The Chair: If I could, I'm going to ask the department officials if you'd join us at the table. I have a feeling that we might have a couple of questions for you as we go along.

Mr. Dallas: Just to supplement my colleague's observations there. Perhaps we had this discussion earlier, and maybe we could be refreshed. There's nothing wrong with being first, but do we have some research relative to other jurisdictions that have implemented a continuum approach to these designations? I wonder if we could share that.

Ms Doyle: Sure. Would you like me to respond to that?

The Chair: Yes. That would be helpful.

Ms Doyle: Thank you for the question. In other jurisdictions, like in Saskatchewan, they've had the co decision-making option for a couple of years, for probably about four years. The co decision-making option in Saskatchewan is for both personal matters as well as property matters. In Alberta we've chosen just to deal with personal matters – so health care, where to live – and not go the property route.

In the Yukon, which is legislation that is also fairly new, they have the supported decision-making agreements. Supported decision-making agreements are for capable people, so people who need that extra bit of assistance possibly because of language barriers or because their disability hasn't rendered them incapable but they still need assistance. What's happening in the Yukon is that they're evaluating the use of it and finding that it is very helpful for people, particularly aboriginal people, which is mainly the population in the Yukon, who are using that to have other people assist them as they are interacting with different systems such as the health system.

In Saskatchewan the research that they've done so far on co decision-making is that by having, as Stephanie mentioned, a unified application, where it can be guardianship or co decision-making, what they're finding is that the more that you have it as kind of one application, the more people will lean towards guardianship. They have a different approach to capacity assessment than what we have built into Bill 24. Our approach is more like Ontario's approach, a very targeted approach. But co decision-making, again, is a fairly new perspective. Alberta will be the first to have included supported decision-making/co decision-making guardianship as the full continuum.

I don't know if Dr. Massolin wants to comment on that.

9:25

Dr. Massolin: No. I'm fine.

The Chair: Anything further to that? Mr. Olson.

Mr. Olson: Yeah. I'm glad you mentioned the distinction between us and Saskatchewan in terms of what they're doing. I guess that if we were going to do it, then I don't understand why we wouldn't do the property part of it, too. My observation would be that usually if a person needs help with one, they probably need help with the other.

Ms Doyle: Perhaps my colleagues from the Public Trustee could speak to that.

Ms Bentz: In terms of trusteeship we looked at the issue, and we felt that it would just bring too much ambiguity to who has the ability to do it and in terms of support or the co decision-making. That's why we made a decision to go with just the trusteeship.

Ms Doyle: Perhaps I could just add to that. For personal matters, personal matters have always been much more specific than the trusteeship matters. They have been around health care, a separate area of authority on health care, on where to live, who to associate with, and participation. We felt that the co decision-making role, because it is in keeping with the Alberta process of kind of having people work together, was more in line with the personal matters than the property matters.

We also had a subcommittee for assessment of capacity that worked for about a year and a half looking at the issues of capacity. A part of their recommendations was that capacity isn't either capable or incapable; there are lots of gradients to it. It was made up of colleges such as physicians and surgeons, nurses, occupational therapists, social workers, and psychologists. So there was a great deal of discussion.

We also had a conference about a year ago around capacity and the population. At that conference there were about 175 professionals from across Alberta talking about a continuum approach – would a continuum approach work in Alberta? – and having people who can assist with decision-making, which is what co decision-making is: the idea that a person has some impairments but where someone has to work with them to make the decision together as a joint decision. There was a lot of support for that concept by people who are actually working in the field. Why we included the co decision-making tool is because there was a strong base of support based on some of the current research.

Ms Bentz: If I may just add a comment. As well, in Alberta there are several informal assistance programs when it comes to finances. There is the AISH informal trustee. There is under the old-age security program, the CPP. In those situations it is often handled in that fashion. In guardianship they don't have those same supports out there.

Ms Doyle: You were talking about personal directives. The difference with personal directives is that while you may plan ahead for a time when you've lost capacity, that agent whom you've named really doesn't have any authority until the personal directive has been activated and you've been determined to be incapable.

Mr. Olson: Right. I understand that, but I still wonder sometimes. If the supported decision-maker was going to be implemented somewhere – and I think maybe you actually answered this question

at an earlier meeting – is it a better fit in the Personal Directives Act than in this act? They have to have capacity – right? – to appoint a supported decision-maker. So if they don't have capacity, they can't do it anyway. I see that there's a commonality there that would maybe make it a better fit in the Personal Directives Act.

Ms Doyle: The reason or the rationale for why it was included in this bill is because it provides a continuum. It was the idea that there is one bill, personal directives, for planning for incapacity. But the idea for Bill 24, really, is where people will go to naturally – the health system and the public and the legal community – around what types of decisions people can make from the time that they have capacity, may need assistance, up until the point that they're incapable. We tried to group everything in one piece of legislation. With the Personal Directives Act, because we were reviewing it at the same time, was the idea that it had to be compatible. The capacity assessment model is going to be very compatible with the capacity assessment model on this one, but it was very deliberate to put it in this legislation so that it's one stop for people to go to.

Mr. Olson: Thank you.

The Chair: Others?

I'd like to ask a question if I could. We may have talked about this at a previous meeting, but in one of the vignettes in the most recent document that you provided to the committee, there was a situation where a person had both a guardian and a co decision-maker at the same time. Am I correct? If so, I'm just wondering if you could explain a bit more how that would work and how any potential conflict of opinion between the co decision-maker and the guardian would be addressed.

Ms Doyle: Okay. I just want to clarify. Is it Donna?

The Chair: It's Donna.

Ms Doyle: Okay. In this vignette it is a real situation. We've adapted it so that we can protect the privacy of the person. We act as the guardian right now. The intent was that in looking at her particular situation, she wouldn't have a guardian anymore. It would be the idea that a co decision-maker would replace the guardian based on the capacity assessment that happened, not that there would be co decision-making and a guardian would be acting at the same time but that you would move down the continuum to the least intrusive, which is the co decision-making.

There could be situations where a person has retained some capacity to make decisions and a co decision-making order is appointed for that person. Then they deteriorate in some areas, and then guardianship is added. We don't expect that to be the practice. We expect that what's probably the more typical situation that the court is going to look at is that it's either going to be a co decision-making order or a guardianship order, an either/or, as opposed to a blended application where you'll have some personal matters for co decision-making and some matters for guardianship. In Bill 24 it does allow for the court to look, if there's a guardianship application, at whether certain matters should still be retained for co decision-making, but we think the practice is going to be for the courts that they'll have co decision-making or guardianship.

The Chair: If I could just add to that, then. I guess I'm thinking about the point my colleague Ms Pastoor was making. What risk assessment was undertaken in developing the legislation to look at situations where two people are acting, one in each role? What risk may that pose to the patient? I'm thinking – I realize you've excluded property from the discussion – of health care, for example. A co decision-maker feels strongly for whatever reason that the individual should enter facility-based care permanently. If the guardian in the situation is the public guardian and presumably less involved or some other person is acting as guardian, what avenues are there to resolve a dispute like that, and who is going to be determined to be in the best position to make recommendations in the patient's best interest? It seems to me you've got an inherent conflict there, and there will be people that attempt to exploit that. I'm just wondering if you could walk us through how that would be addressed practically.

Ms Doyle: Sure. If we take a situation: say Donna is the person that there has been an application for. The judge will not appoint for Donna a guardian and a co decision-maker for the same area. Where Donna and a co decision-maker make a decision about where she's going to live, the judge will not also appoint a guardian because it's the same personal matter. That won't occur.

But it could be a situation where the co decision-maker is saying: I think Donna needs to be in a permanent facility. Donna has to agree to that because it's a consent order. If Donna doesn't agree that she should be in a permanent facility and she wants to withdraw her consent, it ends.

If there is a concern about who trumps who, which I think is part of the question – does a co decision-maker trump a guardian? – it depends on which personal matter. So the court has given, say, that one person can have decision-making in health care and maybe a guardian in the other. Whoever has the decision-making for that particular area is who the court has assigned it to.

9:35

In the protective features anyone can make a complaint about the actions of a co decision-maker or a guardian. That complaint can be received in writing. It comes in to the public guardian's office. We'll review it and, if it meets the criteria, investigate. If it looks like the co decision-maker is not acting in the best interest of the person or the guardian, then what will happen is that after the outcome of an investigation there are three remedies. One is education: let them know kind of what their responsibilities are; get them back on the right track. That includes interviews with the adult, Donna. The second one is dispute resolution, so mediation, conflict resolution. The third one is taking it back to court. The public guardian will take it back to court. If we felt that this was an unworkable situation, we've said that we'll take it back at our own expense and the public's expense to the court to resolve the issue. We don't expect that's going to happen very often, but we built it into the public body's role to make sure that the interest of the person is the primary focus.

Does that help you?

The Chair: Yes. Thank you. I guess the only follow-up: just listening to the description, then, of how it would play out if there was a conflict here that concerned Donna's situation and the complexity of sorting that out, I just wondered if perhaps you have any comment on how complex you expect that process to be. I mean, in some cases you would act on the initiation of a complaint, but I guess my overall question is: who is going to know Donna's personal situation well enough to either be able to make an informed decision or to intervene if that becomes necessary?

Ms Doyle: We just use our current experience as the public guardian in receiving information around guardianship and just try to

speculate ahead for the co decision-making order. What happens now: there's nothing in the Dependent Adults Act allowing for an informal investigation by legislation; it's all directed by the court if there is to be an investigation. We receive hundreds of calls all the time about the actions of guardians from dependent adults as well as from family members, service providers. People who are around the person tend to take on the responsibility. They want to make sure that Donna's interests are protected, so people will call, or they'll try to have a case conference to resolve the issue or whatever.

We expect that when there is a formal process in legislation and there's an investigation, we'll see something similar. We'll see that Donna can do it herself if she's able to and wants to. Her family, her friends, people who are working with her, service providers will come forward because people reach a point where if they're very concerned, they'll want to do something. That has been our experience.

The Personal Directives Act. We've just proclaimed on June 30 the changes in that act, which does have an investigation feature. We have found the same. We have found that people now, because they know that there is a tool within legislation for looking out for an incapable maker, will make the call. What we've found is that it's a variety of people who are coming forward. Sometimes it's family members. Sometimes it's the adult. Sometimes it's a lawyer. Sometimes it's the medical professional. We've had a wide variety of people coming forward in the last two months' use, and the investigation process in the Personal Directives Act is very similar to what's in Bill 24.

The Chair: Any other questions or comments or suggestions that we may wish to consider at a future meeting for changes on this section, supported decision-making and co decision-making?

Mr. Vandermeer: Something that we haven't touched on: should this provision be amended to allow the trustee and a guardian as well to partake in compensation and that? I wonder if we want to have any discussion on that. Should they be compensated for their time? Are there guidelines at all for that right now?

The Chair: If I could, I think that – am I correct? – you've addressed that in section 3, the third section of this document that we're going through.

Ms LeBlanc: That issue is issue 2.8. It discusses compensation for guardians and co decision-makers. Currently under the Dependent Adults Act and the proposed legislation only trustees are compensated, and it's dealt with in the regulations. I think there is a table that allows for certain percentages or as the court otherwise orders.

The Chair: Seeing no other comments, then, on the first section on supported decision-making and co decision-making, let's move into guardianship, and let's explore that issue. Did you want to ask that again, Mr. Vandermeer?

Mr. Vandermeer: Well, I'm just wondering if we want to have that discussion at this time.

The Chair: Absolutely. Would you care to comment on that?

Ms Doyle: Sure. I'd be happy to. Stephanie is correct. In the current Dependent Adults Act there isn't any compensation for guardians. Under Bill 24 we did hear as part of the consultation that people were having direct expenses: they were driving to visit the person, so mileage costs and gas, or they were flying out. They wanted to be able to have as part of their application to the court to be allowed to be paid direct expenses, so we did include that. We didn't include a schedule like the trustee's schedule for remuneration around the role, you know, the time spent. Ours was more a focus on the direct expense, something that you could invoice. If the person had a guardian and then they had a trustee, the guardian would have to show their expenses to someone, I believe the trustee, who would then reimburse them.

Mr. Vandermeer: To me that makes sense, and I think that we should keep it that way.

The Chair: Maybe I'll just go back, then. I'll let Philip and Stephanie give us an overview of this guardianship section, and then we can move into other questions in the same area.

Ms LeBlanc: Sure. There are several issues that arise under the guardianship heading. Maybe the most logical one to move to now is the potential overlap of guardianship and co decision-making orders. Section 33(7) of the proposed legislation does permit co decision-making orders and guardianship orders to coexist. We heard from the department that the intention is not that there be an overlap of powers. I think the first question there is: should they be allowed to coexist? The second is: if they are, should there be some clarification that they should not have an overlap of powers?

The Chair: Okay. This was the issue that we were just discussing in the earlier section. I don't know. I had asked if there was any further comment. I like the way you put it: there's the issue of the overlap, and if that is allowed to exist under the legislation, then how is that managed? Is there any further comment on that? I kind of took a fair bit of time. I certainly got the answers I needed on that point.

Mr. Denis: Mr. Chair, could you perhaps turn up the volume on the speakerphone machine? I'm just having a difficult time hearing some of the speakers.

The Chair: We'll see what we can do at this end.

Mr. Denis: Thank you very much if you can.

The Chair: Yeah, we could all move, lean in a little bit, and it would be easier for Jonathan to hear us.

Mr. Denis: I don't want anyone to sustain any back injuries.

The Chair: Let's go through this, then. Let's perhaps try to zero in a little more on some of the specific issues in the paper. In 2.2 the issue that was flagged: "should the wording 'except in sections 26(2) and 27' be removed, resulting in the Public Guardian also being able to apply for guardianship when a person is 17 years of age" or under? Any comments on that or thoughts? Is this an area that we may want to comment on as a committee, or are we fine with the legislation as it's proposed?

Deputy chair.

9:45

Ms Pastoor: Yes. I just wanted a clarification on that. What this will do will in fact allow the public guardian to be able to apply before 18. Is that the idea?

Ms Doyle: Shall I speak to it?

The Chair: Go ahead.

Ms Doyle: We heard in the consultation that for many individuals, particularly people with developmental disabilities, parents know ahead of time that there's going to need to be a guardianship order, and they didn't want to have to start applying for a guardianship order as they currently do on their 18th birthday and get a capacity assessment. So the rationale was that an application could be made while the person is 17 and a capacity assessment done at that time but that the order doesn't take effect until the person is 18.

When we wrote the legislation, we were also thinking of the public guardian being able to apply at 17 and have an order that would come into effect at 18, and the reason for that may not be very clear. We had some further research that we were doing with the drafter this week, discussing this issue. The intent was that we often are asked to take on responsibility for people who are under permanent guardianship of the director of child welfare, so often people who have already had a child welfare director as the guardian will probably need a guardian whenever they're 18, that being the public guardian most often if there are no family or friends who come forward. So we were seeing this as a smooth transition.

I did appreciate Stephanie's analysis, where it doesn't seem completely clear that the public guardian is able to apply at 17. We were going to do some further research on that to make sure that it is clear. The intent is, absolutely, we want to be able to apply when the person is 17.

Ms Pastoor: Okay. That's good. Thank you. I would certainly support that the public guardian be put into that part of it. I'm assuming that you're working on just clarifying the wording, or do you think it's clear as it is?

Ms Doyle: I think it's the interpretation of 26(2). Section 26(2) is really around when a public guardian is applying when no one else is willing, able, and suitable.

Ms Pastoor: Okay.

Ms Doyle: It talks about the public guardian in those particular situations.

We were interpreting 26(1) as an interested person, and then the definition of an interested person is the public guardian. We are in both (1) and in (2). It's just that different circumstances apply to (2). We were seeing that we would apply as 26(1), as an interested person, but I think it is a bit confusing. I think that's helpful.

If I could just speak to 27, 27 is urgent guardianship orders. We wouldn't, you know, be thinking that that's a great idea to have urgent guardianship orders for someone who's 17 because the person is still a child, and you would not want to apply adult legislation when a person is 17. The urgent guardianship order should be about when the person is actually 18. Section 26 is anticipating the need later on.

Ms Pastoor: Okay. Thank you.

The Chair: Thank you.

Any other comment on this point?

Mr. Dallas: Mr. Chair, just a point of clarification. I think the purpose of the discussion is to sever items that would be potential report items. I think a discussion or an indication that perhaps further clarity in that area is required would be prudent for our report, so I don't know if you need to develop consensus around that or not, but I would suggest that that be one, for sure, that be contained in the report.

The Chair: Thank you. I was going to make a point along similar lines. This may be one that we want to flag for comment in the report.

Any other discussion on this point? I guess, more importantly, is there any disagreement that this is perhaps not something we might want to recommend? Okay. Thank you very much, Cal.

Similarly, I'm going to say just for the purposes of clarity, I guess, that I don't think we reached any consensus on the issue of inclusion of supported decision-making and co decision-making in the bill, but I have a feeling it's something we're going to want to come back to at a future meeting, so I'm going to flag that issue as well.

Please jump in, members, you know, as we go along, as we review each of these boxes. If you feel it's something we should be flagging either to reach consensus now or next, let's make a note of it. It'll get in the briefing, then, that comes to us for the next meeting.

The next one is 2.3. The question there has to do with section 26(3): should a potential guardian be required to file a guardianship plan? I'm not sure if it was one of the members that raised this or if it came up in one of the presentations. Any comment on this?

Mr. Olson: I'll speak to that because I know that I did complain a little bit, I think, about the idea of guardianship plans and trusteeship plans and so on. Just from the point of view of the person who is the applicant, again, I'm just concerned about paperwork and being kind of overwhelmed by having to come up with more and more documentation. If I'm not mistaken, there was some provision as well for having to go back to court with amended plans in some circumstances. That was my concern, anyway, that it was going to create more complexity, more paperwork.

The Chair: Dr. Massolin.

Dr. Massolin: Yeah. If I could just add, just to give a little bit more clarity as to from where this concern arose, I think the submitter basically questioned the merit of a guardianship plan as compared to a trusteeship plan, which was something you could plan out for future financial needs, and that was reasonable. The submitter in this case questioned whether or not it was possible to plan out a guardianship situation in the same way as you would with a trusteeship plan.

The Chair: If I could, I'm going to ask you again to try to walk us through a real-life situation. What would a guardianship plan look like, for example?

Ms Doyle: Thank you. The guardianship plan: we had said by prescribed form. So it will be in regulations. We've already kind of developed a guide for what would be in a guardianship plan. Would it be helpful for the committee just to know exactly what we're anticipating would be in the guardianship plan?

The Chair: Uh-huh.

Ms Doyle: The first part, just to speak to the application process. A lot of the actual application process is in the regulations. The intent is to reduce the number of documents that are coming forward to the court. So instead of having a big, thick package, which is now called the self-help kit, it will be application information about the person, a capacity assessment, a guardianship plan, or a trusteeship

plan, and some information that's provided by either the co decision-making guardianship or trustee about their suitability. A review officer report would be a part of that. Pretty reduced in terms of the number of documents because right now it's quite a lengthy process.

The guardianship plan. What we are anticipating is that the potential guardian would be talking about some of main reasons they think the adult needs. If we take Donna, why does Donna need a guardian? Basically, right now we have a guardianship needs report that is submitted to the court that addresses that.

We also ask what type of personal matters the person is expected to face in the next five years. We know five years is a long window, and you don't always know what's going to come up. But if it is a senior who has poor health, you're probably going to anticipate that some situations are going to come up about where that person is going to live. You don't always know that. How we frame it is: what types of decisions do you expect?

The next one that we look at is: how do you plan to involve and inform the person? We want the guardian to be thinking ahead of time about how they're going to keep the adult, Donna, involved in decision-making or informed, and that's around the idea of keeping that person's best interest in the light, but the guardian is always going into that.

9:55

The next one that we're looking at is: how do you plan to maintain their dignity and autonomy? The whole legislation is built on as much as possible keeping the person's dignity and the least intrusive approach.

Now, we know that the guardian is not going to know all the specifics, but it's to lead them to be thinking about their role ahead of time.

Another thing that we're looking at is: have they had a conversation with the person about their values and beliefs before they take on the role? If it's a family member who's taking on the responsibility for their parent, it's a good idea to do that. We certainly encourage that when a person is taking on the responsibility as an agent under the Personal Directives Act. We also ask them: what do they anticipate they will be informing family around their role. Thinking ahead about, you know, who else may need to be involved in the decision-making and if they're anticipating going to any educational sessions about being a guardian. So a pretty high level, not so much in terms of, "I plan to make this decision about surgery now" because you won't know. It's more around involving the person, anticipating decisions, and how they plan to act as a guardian. That's what we're looking at at this point.

The Chair: Ms Pastoor.

Ms Pastoor: Thank you. Can I just kind of do a little role-playing here and see if I can get it through my head?

Ms Doyle: Go ahead.

Ms Pastoor: Okay. I'm considering being a guardian for Miss Smith. When I come to the office or whomever I go to, I actually am going to have a form that's written out that says: are you planning to do blah, blah, blah? I personally don't have to come up with a plan. What I'm doing is reacting to a form that you have created so that I'm very aware of the expectations and the responsibilities when I say, "Yes, I'll do this."

Ms Doyle: Yes. The intention is that the form will be part of the package so that when you receive the package on how to apply to be a guardian, it will be there. Then if you have questions about how you're supposed to fill out this form or what the intent of it is, there will be information. Either you can talk to someone, or there will be a written pamphlet.

Ms Pastoor: Right. Thank you.

Mr. Olson: I just have a follow-up. As you listed off the forms that would be needed, it sounded to me like virtually the same forms we're using now although you said that you won't be using the guardianship needs report. So, essentially, this plan is replacing the guardianship needs report. Other than that, though, what else? I was just looking here. Is there affidavit evidence still required? Is this stuff still appended to an affidavit? Is it an exhibit to an affidavit?

Ms Doyle: We have a committee right now with court services that is looking at all the regulations to basically see how the materials are going to be prepared, and it's also looking at the Rules of Court Committee. A lot of that work is happening right at the moment.

Ms Bentz: Maybe Rick could speak to that since he's heading up that committee. That might be helpful for you.

Mr. Olson: Thank you.

Mr. Bowes: Hi. I'm Rick Bowes. On that specific point where you were asking about the affidavit, as Cindy mentioned, I'm on this committee – I didn't realize I was heading that – that's looking into the process and that issue of the affidavit. You all know what it looks like. It's the strangest looking affidavit that you've ever seen because it just seems to be like a placeholder for all of the attachments.

We anticipate that some sort of affidavit will be filed just to emphasize the need to tell the truth in the application, but we anticipate that it will not look exactly the way it looks now. We hope that it will be somewhat clearer. You made the point that it would look quite a bit like a trusteeship needs report, and that's the point that I would have made.

In Ontario they have, I think they call it, a management plan in the trusteeship area, and if you look at it, it looks sort of like a souped-up trusteeship needs report. I know that everyone here won't be familiar with the trusteeship needs report, but it basically sets out assets, liabilities. The Ontario form looks quite a bit like that, but it also then says: what are you planning to do with these assets?

I'm jumping ahead a bit into an issue that was raised with respect to, say, deposit accounts and the ability of a financial institution to put money with an affiliate in a deposit account. This is an area where I would say that a trusteeship plan is your friend, in that if as a prospective trustee you're somewhat concerned about the default rules that apply and if you're a corporate trustee with an affiliated bank or whatever, you can in your trusteeship plan say: I plan to, if appointed trustee, deposit funds with my affiliated bank. You'll be able to get the court's approval for that, of course assuming that the court is comfortable with that. Basically the idea there would be that the trusteeship plan can deal with some issues that are maybe a little bit unusual and get advance court approval for those.

Ms Bentz: I was just going to make the point that we also hope that when you're identifying the assets, that will trigger the idea of whether or not you need to ask the court for special authority, for instance, for the deposit accounts, gifts, sale of real property. That will be helpful, and you can ask it all in that one order, hopefully.

Mr. Olson: Right. I can see the utility in that part of it. I'm kind of more focused on the guardianship side of it right now. Just coming back to the question about a change in the guardianship plan, is it necessary to go back and get further court approval for a change to the guardianship plan?

Ms Doyle: We did include in the act that if there is a substantial change in the guardianship plan, it could go back to court to get approval. That was before we wrote the guardianship plan as kind of the regulation. We're trying to have the guardianship plan fairly high level so that it is sensitive to situations that could change so that it wouldn't be so necessary to go back to court.

You asked a question about what other documents are not going to be included in the application that are currently in the application. The functional assessment: what happens now is that there is an assessment done by a doctor or a psychologist for capacity assessment, and then there's another document called a functional assessment. The functional assessment asks a series of questions looking at how well the person is able to make decisions in particular areas or if they are at risk. They look at all of the personal matters like health care, where they're living. That document was often filled out by either family or by a health care provider. We're not going to be using that document anymore.

Mr. Olson: I'm still going to challenge you a little bit. I don't see a net reduction in the number of documents. I appreciate the fact that there won't be a guardianship needs report and a functional assessment, but there will be the guardianship plan, and then there's a report of an officer. That's something new. It seems to me that it's going to be about the same.

Ms Doyle: I think they've – if it's okay to respond to that.

The Chair: If we could briefly, and then I think we should move on.

Ms Doyle: Yeah. The review officer report – and it's going to come up a little bit later – is a request that we heard from the judges, from the court specifically. When they were getting an application from a person by paper, when it's a desktop application and there's not a hearing, they were finding that they didn't have sufficient information on whether or not the guardian was going to be a good guardian, suitable. We heard from them that because they are asking the public guardian to be served on every single application, they were anticipating that we were already doing something around screening that suitability and making sure that the adults' voices were heard. That was never the expectation in the Dependent Adults Act. So the review officer report, that interviewing the adult and screening the suitability, was a response to providing the judge sufficient information that they can make a decision on who is going to be a good guardian.

10:05

Mr. Olson: Thanks.

Ms Doyle: No problem.

The Chair: Thank you. Mr. Olson, I'm going to note that this one is one we potentially will come back to, then.

Mr. Olson: I wouldn't mind just keeping the option open to discuss it further.

The Chair: Okay. Thank you.

There are a number of other questions posed in this section. Just in the interest of time, again, if there are no concerns in the committee with the legislation or if there is not a desire to explore a particular question that's on here, we don't have to. I'm going to be a little more active perhaps in trying to keep this moving through. Please stop me when you hit something that you want to explore in more depth.

The next one has to do with specific services. Should the court be given the discretion to dispense with a specific service if it's deemed that that service would be of no benefit to the adult? The example here is the adult perhaps not able to comprehend the service or, I guess, program that was being offered. This is an ability, I take it, that the court does not have at the present time, and the question was: should that be added? Does anyone want to pursue that one?

Ms LeBlanc: I'll just maybe give a better explanation than is in the report there. Section 26(5) of the bill right now permits the court to dispense with service on the adult if it would be harmful to the adult. The submitter here was just requesting that service also be dispensed with if it would be of no benefit to the adult. The reasoning there is just because personal service is expensive.

The Chair: Comments?

Mr. Olson: I strongly support that change, having served comatose people when there's no point. You know, it's just a common sense thing.

The Chair: Any other comments on this point?

Ms Pastoor: I guess each person is such a unique situation that the word "service" would have many definitions on how the situation came up or what the person was – in the instance that Mr. Olson has mentioned about comatose, the services that I would see as being indispensable would be comfort, and then the question would be feeding. Would it be a feeding tube? You know, are we talking about the same thing here or not?

Mr. Olson: No. We're talking about handing legal documents to somebody to give them notice of a court application.

Ms Pastoor: Okay. Thank you. Definitely we're talking about two different things. Thanks.

The Chair: Anything further on that point?

Okay. If we could move on then, the next one I think we have already explored in some depth. The potential overlap of guardianship and co decision-making orders: any other comments on that one? I noted it as one we would come back to. No? All right. Thank you.

The next area has to do with sections 33(9) and 54(6) of the bill. This is sort of in reverse order. The bill as proposed gives the court discretion as to when review of a guardianship order should be made. The question, I guess, raised – and I can't recall by who or which body in the presentation – should there be a set limit? The current legislation prescribes a limit of within six years. Any comments on this one? Now the question I'm asking is: do you have any concern on this point with the bill as it is currently proposed? It doesn't look like it, so we would move on.

The next one is section 35(4): should there be a requirement that if the adult's condition improves in the future, the guardian must again explain his or her powers to the adult? Stephanie, could I ask you to just elaborate on this, maybe rephrase the question a bit.

Ms LeBlanc: Sure. Section 35(4) of the bill does require the guardian to explain to the represented adult the extent of the guardian's authority and what sort of powers the guardian has been given by the court. One of the submitters suggested that if capacity were to improve in the future, there should be a requirement that the powers are explained to them again. So if you have a situation where, for example, someone is in a coma or something like that to begin with and then improves in the future, whether there should be an additional requirement to inform the adult of the guardian's powers.

The Chair: Any comment on this point? I guess the question is: is there an interest in discussing something beyond what's proposed in the bill?

Okay. Seeing none, then, can we move on to the next issue, I guess. It appears it's not relevant to a specific provision in the act, but the question is around compensation, Mr. Vandermeer's point earlier. Is there any additional discussion on this or any elaboration, Stephanie, on the question?

Ms LeBlanc: Just to sort of restate what I mentioned before, that trustees do receive compensation. As Brenda mentioned, there is now going to be the ability of co decision-makers and guardians to be reimbursed for their direct expenses, but unlike a trustee they don't have a set amount of compensation just for their time and effort spent in caring for the adult.

The Chair: Anything on this point, Mr. Vandermeer or the deputy chair?

Dr. Massolin: I just wanted to add, Mr. Chair, that the Saskatchewan legislation allows for the court to make an order setting a fee to be paid to the co decision-maker, just to get a sense of what Saskatchewan is doing.

Ms Pastoor: I guess I have a problem with this because if I'm understanding this correctly, these direct expenses would be coming out of the monies of the person that they're looking after, and I could see that without really strong oversight those monies could disappear fairly rapidly. "I'm going to put in expenses because I went to the grocery store. Well, I went to the grocery store for me, and I bought him a quart of milk." I really can see some of this being an issue without some kind of true oversight of that because this is how these monies disappear. I mean, somebody has a lot of money, and somebody now – it happens even on the trustee side, not so much on the guardian side but on the trustee side. This is how this money disappears. It's sort of legal but probably very unethical, and in the end the person ends up with nothing, or large amounts of money disappear. I really have a problem with somebody taking on a guardianship, which would probably be for a family member, and then trying to take money from that family member.

Mr. Quest: Just using the Saskatchewan example, the fee is set by the court every time based on what? What are the criteria for setting the fee? Do we know? Can we get more information on that, Mr. Chair? To me the fee, you know, subsequent to what we were just talking about, could be an open chequebook, and it is a concern. I'd like some idea what the criteria would be for the fee if possible.

Dr. Sherman: I think you do have to balance that. In this economic climate the most appropriate and the best guardian may not be in a financial position to be. This can be quite the responsibility, looking after an aging parent. I think the option should be there to have a reasonable fee because if the most appropriate person, because of the burden of looking after his parents, cannot financially afford to do this, you would have the wrong person making the decisions. I believe we need to find a balance between protecting the person being looked after and at the same time protecting them by making sure that they have the right caregiver looking after them. I just thought I'd bring that other point of view up.

10:15

Mr. Dallas: I'd agree with Dr. Sherman's observations on the question, that perhaps there's some manner, either through regulation or in the legislation, that a reasonable limit could be applied or a definition of the types of expenses that would be eligible such that there might be a maximum annual figure applied to those fees that would be eligible without further court review or something that would provide some check and balance to this. For the individuals that are providing the service, while they may not have an expectation of remuneration, I think there is, you know, also a reasonable expectation that one should not be significantly out of pocket for providing support and services.

The Chair: Any other comment?

Ms Pastoor: I don't know how this could be done, to anticipate or figure this out. If these expenses are being put against this person's money and they don't have hardly anything to begin with, the hardship would be on the person that's being looked after. I'm just thinking that often people are ending up with only Canada pension, and probably the children are better off than some of these parents in that situation. So if there would be some way. I know that people that live in lodges at the end of the day have to be left with $265 a month, which would be for looking after them. In this case there might be something like that, that they can't dip into a certain amount of money that must be left over each month for that person. Then, of course, at the end of life, too, there are always funeral expenses that may or may not have been done ahead of time. It does become a very complex issue when you're dipping into other people's money, especially when they have no way of increasing the money that's coming to them monthly.

Mr. Olson: Well, I think there are any number of examples one could come up with where you could see a risk of abuse. Also, you know, there could be situations where you have a child who might be able to live with a parent and allow them to stay in their home for a longer period of time. Should that child be paying rent to the parent, though? Are they getting a benefit? Are you conferring a benefit on them by letting them live in the parent's house rent free and maybe not having to pay utilities or maybe groceries? I would say that those are all types of things that might be beyond direct expenses. They could be offside in the way that we have the legislation drafted right now, so we are putting in a disincentive for people to look after their own family members. I agree with Dr. Sherman that we want to have the flexibility to allow people and to encourage people to look after their own family members.

The Chair: Anyone else on this?

Mr. Vandermeer: I'm satisfied with the explanation that Stephanie LeBlanc gave to us. I think that you're going to have to rely on people's honesty at times. I know people will abuse that. You know, they'll buy two quarts of milk and keep one for themselves. I mean, you're not going to be able to stop that kind of stuff. But they also need to be reimbursed if they're paying expenses for their

parents or grandparents in that kind of situation. I'm satisfied with the explanation.

Ms LeBlanc: I was just going to respond to the question about the Saskatchewan legislation. The provision permits the court in its total discretion to give a fee to either the co decision-maker or the guardian, and there's no criteria in that legislation as to when a fee should be awarded.

The Chair: Okay. Does that answer your question, Mr. Quest, or would you like more information?

Mr. Quest: It answers the question, but it creates more questions. I guess I'm just not completely comfortable with a court setting a fee in every individual case. There are so many different variables. I mean, agreed that we can't put family members or guardians at a disadvantage. In all cases, of course, it takes a lot of time. If the person is a worker who's paid hourly and it takes them hours every week away from their job to do this, yeah, there needs to be something. I don't know what the solution is. But, you know, having it sort of arbitrarily set by a judge every time: I'm not completely comfortable with that.

Ms Doyle: I wonder if I could just provide some clarity on what we heard when we went to the public meetings. This issue did come up at the public meetings for people who were private guardians as well as family members. What we heard is that the direct expense was the key issue, the driving or flying. The private guardian who provided a submission was talking of coming from Halifax to see her father in Calgary: those kind of direct expenses. There was a lot of support that people shouldn't be out of pocket for taking on the important role.

There was a lot of debate about the difference between a guardian and a caregiver and that sometimes they're the same person, a caregiver who's taking care of mom at home, providing for all of the day-to-day supports, getting to doctors' appointments, all those types of things, and what the role of a guardian as a decision-maker is. I think where we were kind of leaning in the bill is to say that the act sees the role of a guardian in the reimbursement of expenses because that's a decision-maker role. You have to be there to see the situation. The actual caregiving is something separate from the legislation. There are a lot of initiatives right now by the federal government and research looking at informal caregiving, but we didn't see caregiving being reimbursed through this particular piece of legislation.

The Chair: Okay. Well, I'm going to flag this one as one potentially to come back to if you determine there's any additional information that would be helpful to the committee. On the question of the basis for fee determination, I don't know if there's any information in any other jurisdiction. The other one I would suggest is safeguards, if there are other jurisdictions that have safeguards in their legislation. I know Ontario has that provision for a minimum amount, that the deputy chair talked about. That may be useful to the committee as well at the next meeting. So if that information exists, if you would forward it to us. If not, we understand that as well.

Okay. If I could, I'm going to suggest that we take a break. Can I suggest we reconvene at 10:40 to give people a bit of time here. Then we'll go on with the next section, on trusteeship.

Thank you.

[The committee adjourned from 10:24 a.m. to 10:40 a.m.]

The Chair: Okay. We're back on the record. I'll just note for the record that Ms Notley has joined us as well. Good morning.

Ms Notley: Thanks.

The Chair: We're moving along quite well here. We're on page 4 of the focus issues report, and we're at the trusteeship section. I talked to a few people during the break just to see if the process was working for you. I think what I'll just do as we move through each is that I'll ask the question first: is this something that you want to sever for a discussion? If the answer to that is no, we'll try and move on to the next item. That way we're not discussing things that are not of particular importance to the committee in terms of its review.

This section has to do with the ability of a trustee to manage real property outside of Alberta. Stephanie, did you want to elaborate on this one at all?

Ms LeBlanc: Sure. The question there is whether a trustee should be given authority to deal with real property located outside of Alberta. The question isn't more so, as it was posed by the submitter, "Should there be authority to deal with real property outside of Alberta?" but "Would the court actually have jurisdiction to make that order, and would it be enforceable?" Having looked into this a little bit, I don't think it has necessarily been determined in the case law, but it may not be an issue that the committee wants to consider here, or it may want to direct further research on. Anyway, I'll leave it to you.

The Chair: Okay. I'm going to ask the question, then: is this an item that we wish to discuss? Hearing none, I guess we'll move on to the next item in the list, then.

Issue 2.10, the power of the trustee to open a deposit account for an adult. A submitter posed the question: should this section expressly permit a corporate trustee to open such an account in its own or affiliated financial institution? Should this section provide protection to financial institutions for any misuse of this type of account? Again, unless you have anything to add, Stephanie, is this an item we wish to discuss?

Ms Pastoor: Just the part about "should this section provide protection to financial institutions." I think the onus should be on the financial institutions to look after themselves.

Mr. Denis: I would actually tend to agree with that. It's up to the financial institution whether or not it decides to get involved in such a situation in that manner.

The Chair: Just for clarity, both questions are something that someone was proposing – I forget the name of the organization – that could be added to the legislation. I guess the question is: do we want to pursue the discussion of adding these things to the legislation, or are we content with it as it is?

Mr. Vandermeer: For the point of clarification say that I become a trustee for somebody, and he's got five different accounts all over the place, which is hard to manage. I say: well, I'm going to consolidate these all in one institution. I mean, wouldn't that make sense?

The Chair: Do you want to comment on that?

Mr. Bowes: Yes. It would make sense, and in fact that's what

generally would happen. The trustee would basically close out those accounts and put it all in an account managed by the trustee. The specific issue here arises – and this is a practice that some lawyers will include in their court orders – where the order authorizes the trustee to permit the dependent adult, under the current legislation, to maintain a small account. There's not a lot of money in the account, but they can use it to buy necessities or things that they need on a daily basis. The purpose of the section in question is to give legislative approval for that practice, essentially. That's the context.

You're right that it would make sense normally to gather in those accounts and put them in one account, and that is generally what does happen and will happen. This is dealing with sort of an exception, where you leave a small amount of money with the dependent adult so that they can deal with it. That's why the section in question allows for the court to impose limits or conditions such as a limit on the amount that can go into that account that's left with the adult.

The Chair: Please correct me if I'm wrong, but if I recall correctly, the question here was whether a corporate trustee such as a bank or an insurance company should be allowed to open an account in an affiliated corporation that it holds, perhaps a mutual fund, for example, a holding company for mutual funds, so the same owner. I think the issue was around whether this should be permitted, and some of the discussion at the meeting was about what conflicts of interest might arise as a result. It wasn't so much about the individual acting as trustee but, for example, a bank as the trustee. A bank wants to open an account in mutual funds in the name of the person whose affairs it's overseeing. Is that fair?

Mr. Bowes: That's correct. It gets back to a point that I made earlier, anticipating it myself, that the bank could ask the court for express authority in the trusteeship order to do that. That's allowed for in the legislation.

The Chair: Okay.

Mr. Dallas, then Ms Notley.

Mr. Dallas: Mr. Chair, thank you. I believe we're talking, then, about section 2.12. I want to just clarify my understanding, and that is that the way the legislation has been prepared, a trustee would not have the discretion to make those investments in its own enterprise or an affiliate of that. I guess that personally I'm of the concurrence that that's appropriate, that they should not have that ability. Unless someone wishes to discuss the potential for change, then I would suggest we leave it as is.

Ms Notley: Actually, I agree with everything he's just said. We can move on.

Mr. Olson: I also agree, but I have a question. I'm just wondering if you have any information in terms of all the trusteeships out there. How many of them would have corporate trustees? I would think that that's a fairly low number, a low percentage, isn't it?

Mr. Bowes: It's a very low percentage.

Mr. Olson: Yeah. Corporate trustees are only interested in managing the money of high net worth individuals, so they're not going to be looking after somebody who has, you know, a $50,000 term deposit. I think it's appropriate to have in the legislation the ability for them in those kinds of extraordinary circumstances to make a special application to make some unique arrangement, with the court's approval. I think it's good the way we've got it.

The Chair: If there's nothing further, we'll move on, then, to the next one.

This has to do with the section allowing a trustee to use the adult's monies to support a child who is less than 18 years of age. That's what's in the bill. The question by the presenter is: should this section be amended to permit support of a child who is 18 years of age or older who is attending a postsecondary institution? Stephanie, any comment on this one?

Ms LeBlanc: This was raised by one of the submitters in terms of the discretion that a trustee has in using monies to support any dependents or any other persons that are specified in 56(3). This section allows a trustee to care for a child of the represented adult, but it's limited to someone who is under 18 years of age. The submitter thought that maybe a child who is older than 18 but attending a postsecondary institution might also benefit from some support and that if she were a represented adult, she would want her trustee to have that ability.

10:50

The Chair: Is it the will of the table to pursue discussion on this one?

Ms Notley: On the face of it it appears to me to be a fairly reasonable recommendation, a reasonable concern to raise and make sure that we work through unless the staff can tell us that there is some other way to deal with the problem.

Ms Bentz: If I may, I just wanted to advise the committee that we've done some preliminary research on this matter. We have not had an opportunity to discuss it with the Minister of Justice yet, but we would like to bring forth the position of the department at the next meeting, if that's not too late, on this particular issue. Would that be okay?

The Chair: Yeah, if the committee is in agreement. It sounds like there would be an interest in discussing this option further as one of our recommendations. Rather than your position, a background information that just sort of helps frame the discussion for us would be much appreciated.

Ms Bentz: Sure. Absolutely.

The Chair: The next one has to do with the ability of the corporate trustee to invest. Again, the presenter was asking: should section 59 expressly permit a corporate trustee to invest in pooled or mutual funds offered by itself or an affiliated financial institution? Should a delegate also be permitted to do so? This is very similar to what we just discussed, I think, under 2.10. Could I ask: is it not the same thing?

Ms LeBlanc: It is. Issue 2.10 was specifically directed to that small account that the trustee is able to open. But this is just generally whether a trustee should be able to invest in an affiliated institution.

Dr. Swann: It seems to me that they're saying that the discussion we had earlier would apply here, that we would not support that.

Ms LeBlanc: That's correct. I think the same discussion would apply.

The Chair: Any other comment on that one? Okay. Thank you.

We'll move on. The next one is 2.13, subdelegation. This section of the bill incorporates certain provisions of the Trustee Act. These provisions allow for delegation but not subdelegation. Should the bill be amended to permit subdelegation? Perhaps you could elaborate on this one a bit.

Ms LeBlanc: This was a submission brought forward by the financial institution that presented to us, and they didn't get into it too in depth. The bill will incorporate provisions of the Trustee Act, which applies to all trustees in Alberta. The Trustee Act specifically says that you can delegate to an agent like a stock broker or another investment person. It doesn't specifically say that then that investment person could delegate to another person, and that's what they're asking to be incorporated into this bill. I would note that if that was incorporated into specifically this legislation as opposed to an amendment to the Trustee Act, then persons covered by this bill would be in a unique situation as opposed to all other trustees in Alberta.

The Chair: Do we want to pursue this one?

Mr. Dallas: No. I would propose that we don't need to segregate this for further discussion.

The Chair: Agreed?

The next one is 2.14, personal representative. A fairly simple question: should the term "personal representative" be defined in the bill?

Ms Pastoor: Yes.

The Chair: Agreed?

Sorry. Mr. Olson, did you want to add something?

Mr. Olson: I was just wondering about the word "defined." Would it be defined by a reference to the surrogate rules, or would you just repeat the same definition that's in the surrogate rules? How would you do that?

Ms Bentz: It could be defined as stated in the surrogate rules. Last night we checked several other pieces of legislation within Alberta, and we noted that there are many that do not define the term; they just use it in the legislation. So it's both ways. But you could use the definition as set out in the surrogate rules.

The Chair: If I could ask, anything further on that one?

Mr. Olson: No. I don't object to it being defined. I was just wondering how it would be done.

The Chair: When it comes back in the next iteration of the potential topics, potential recommendations for our report, could we get a proposed definition along with it? Philip, could you work with the department on that?

Dr. Massolin: Yes, I will do so.

The Chair: Okay. Issue 2.15 has to do with in the event of a trustee dying or losing capacity. The current provision is that the Public Trustee takes over upon notification. The question posed by the submitter is: should a personal representative, as defined potentially, or trustee of the original trustee step in pending the appointment of a new trustee to prevent a gap in authority? I'm a little unclear on the language in part of that sentence. Stephanie, did you want to clarify?

Ms LeBlanc: Sure. Then maybe some questions could be directed to the department. Section 64 permits the Public Trustee to step in when a trustee dies or loses capacity. I think the submitter's question here was just about the requirement that there be notification and what happens in that period of time after the trustee dies, before the Public Trustee is notified, to the person who is being represented.

The Chair: Okay.

Ms Bentz: The department's response is that we believe that section 64 works quite well the way it is in terms of: as soon as we are notified, we will take over to be the interim trustee and be the custodian of the property until a new trustee is appointed. We have some concerns that it might cause some confusion if there are two people or two entities that are able to be the interim holder of the property, or so it seems. We believe section 64 deals with the issue adequately.

The Chair: Ms Notley.

Ms Notley: Yeah. I just had a question in terms of what your practice is in terms of there being any delay or what the timeline is. Has the practice been that the Public Trustee has been able to jump in within days or hours?

Ms Bentz: Yes. Right now I think more of the problem is: what do we do in the interim? We've tried to deal with that issue in the new act as to: how far do we go in being the custodian? Do we take over full trusteeship, or do we hold back because somebody else is going to be appointed? That's more our day-to-day, practical problem as opposed to that no one advises us.

Ms Notley: Thank you.

The Chair: I take it that we would not want to sever this one for further discussion. Agreed? Okay. Thanks.

That takes us to the final one in this section, 2.16. Again, this was proposed by a submitter. Should this provision be amended to allow a trustee to pretake his or her compensation, noting here: without prior authorization from the court? Any interest in severing this one for more discussion? It would appear none. Okay. Thank you.

We'll move on, then, to the next section, protective measures. Now we're into division 6 of the bill. This has to do with the potential for a complaints process. Well, there is a complaints process, but it concerns the proposed complaint process and a suggestion that an ombudsman-type position be created to investigate complaints. If this position were created, how would it differ from the current powers of the complaints officer and so on? You can read the rest of it. Part of this also was the discussion about the role of the Mental Health Patient Advocate, potentially, and areas of overlapping jurisdiction. Then the question was posed to us: should there be a new position similar to the Mental Health Patient Advocate created for represented adults?

Mr. Dallas: Mr. Chair, I would just suggest that while it would make for enlightening and interesting discussion, it's outside the scope of what this bill tries to do. I don't know that it's appropriate

to slice it out for further discussion at this time. You know, it's a matter not directly related to this bill.

11:00

The Chair: Any other thoughts on this?

Ms Pastoor: Perhaps one of the departments could maybe run through the differences with exactly how much power the Mental Health Patient Advocate has. Are they just an advocate, or could they actually in the case of abuse be able to turn it over to the police or have these sorts of things go forward past the advocacy? If that would be the case, then I think that we should have an ombudsman. There has to be some kind of outside person that people can go to without fear and without fear of retaliation and those sorts of things.

Ms Doyle: Would you like me to answer that? The Mental Health Patient Advocate's position, as I understand it in the document that was provided by Sandra Harrison, is that their primary role is around investigating complaints and looking out for the rights of people who are formal patients under the Mental Health Act. Under that, anyone can make a complaint to the Mental Health Patient Advocate, and they will check into it and follow up and look at the appeal provisions.

If it is a complaint about the actions of a guardian and they are a formal patient under the Mental Health Act, then all the remedies that are under the Mental Health Act apply. So the person could go to the advocate, and the advocate could investigate. If the person is not a formal patient and they are outside the scope of the advocate's role, then a person can make a complaint under the complaint process with Bill 24, and that complaint could be investigated by the office of the public guardian or the Public Trustee.

There is always a complaint remedy. If it was a complaint about the public guardian acting as a guardian, somebody independent of us would investigate. That's the intent.

Ms Pastoor: Thank you.

The Chair: My read of the room, then, is that – oh, sorry. Ms Notley.

Ms Notley: Sorry about that. I'm certainly not here to delay things, but I do have a little bit of a concern about this because – and please jump in if I'm misinterpreting or misreading this – it seems to me that it does actually create a disparity of treatment for people who are being represented, depending on the nature of their incapacity. If they have the type of diagnosis and the type of incapacity that would have them eligible under the Mental Health Act, there is the opportunity, this other process to go through, through the mental health advocate office or whatever.

My reading of what's in the bill right now is that if they aren't covered under the Mental Health Act, maybe have some form of dementia or something – is that correct? – they could simply file a complaint. But as it reads right now, the act gives the complaints officer the sole discretion to choose to not pursue it, so the whole process stops. If the complaints officer says, "In my view, this is vexatious or frivolous" or "You know, the person is a bit of a nutbar," whatever, then the process stops. I think we did hear a lot of concerns about there being what I think we probably all agree is a minority of cases where things can go badly. It seems to me that there needs to be, you know, some kind of equivalent process to ensure that we're not treating people differently and giving them different resources to protect themselves based on the nature of their incapacity, which it appears this might do.

I think that it is actually within the scope. I mean, we have a division here called Protective Measures, so I think that it's well within the scope of this division to look at whether this links in seamlessly with the other opportunities that are available to people who are in different situations. Maybe I'm misreading it, but that's what I think the outcome would be if we were to just leave this the way it is.

Ms Doyle: Shall I respond?

The Chair: Yes.

Ms Doyle: If I'm understanding your question – please feel free to correct me – the idea is that for people who have the investigation process, they're already having someone appointed by court. The court has determined a co decision-maker or guardian or a trustee. So it only applies to those individuals that are under the complaint process.

If a complaint was made about someone who the court has already appointed a decision-maker for, then there is a review by that intake officer and then a complaint. It's not the same person. Whoever is receiving it, the decision to rule them out, that it's frivolous, has to be at a higher level. So there are a number of people who are involved in the process as opposed to just one individual. Also, if a person doesn't feel that the complaint is going forward, they can always take that to court and trigger a review of the decisions of the guardian, the co decision-maker, or the trustee, so the complaint process.

What we will build by policy is that if a complaint is rejected, people can come back, and it'll be relooked at. The advocate's position is primarily for when a person is being detained under the Mental Health Act, so that is a bit different.

The Chair: Anything further?

Ms Notley: Yeah. I mean, I appreciate those clarifications, but I don't know that that necessarily gets away from the concern that I have. Yes, you can always, I suppose, go to court, but a person who has dementia may well perceive themselves as being, effectively, detained in some cases. The real outcome of whether someone is or isn't detained: you know, you have to look at that.

The idea behind and the policy implications, I think, and the purpose behind having a mental health advocate was to try and keep those sorts of things out of the court system because the court system is overworked. The idea is to try and provide an objective yet familiar and accessible and at the same time independent mechanism through which these concerns can be resolved so that the person who has the concerns isn't having to make an application to court because, you know, we talk day in and day out about how the courts are ridiculously expensive, and we are underresourced in a thousand different ways there.

I understand that the mental health advocate is not that independent complaints resolution process; they are an advocate who tries to mediate. Nonetheless, they are a person who would walk into some situations. While there is a rational distinction between those situations where they would have jurisdiction and those where they would not, I think there's also a lot of similarity between the situations where they would have jurisdiction and those where they would not. I think we run a risk, particularly given what we know to be coming in terms of the population bulge and the issues that will be facing us as a society and as a community over the next several decades around the number of people who will be dealing with dementia issues.

I, frankly, think this requires a little bit more discussion because I think we might actually create a problem if we don't think about whether there's a better way to resolve this issue.

The Chair: Thank you.

Dr. Sherman: Is this complaints person in the same organizational structure?

Ms Doyle: Yes.

Dr. Sherman: My concern is that it would be like the fox guarding the henhouse.

Ms Doyle: If I can just clarify. If it's a complaint about a private citizen who is acting as a guardian, co decision-maker, or trustee, it comes in to somebody neutral, either the office of the public guardian or the office of the Public Trustee, to investigate the complaint, so it is somebody separate from the situation.

Dr. Sherman: Are they completely independent?

Ms Doyle: They are a public body, so the interest is around protecting the rights of the individual. They don't have a relationship directly with the person who they are investigating if it is a private situation.

11:10

Dr. Sherman: Going to court is usually a failure in diplomacy and a failure of the process, and nobody wins when you go to court. I think that in having a policy, we should have a policy that reduces the number of people going to court, which means you need somebody truly independent, somebody that will prevent court action. I don't know if it's an ombudsman. I don't know if this is set up to prevent that from happening. Many people can't afford to go to court. That really should be the absolute last option. Many people can't afford court action, and that takes years to resolve any dispute. I'm not quite happy with that just as a simple little option. I don't know. Verlyn can tell us as a lawyer that that's not a good option for many folks. We need a different remedy where problems can be solved without going to court.

Ms Doyle: I think that the intent was that by having the investigation process right within legislation, that was a preventative so that people wouldn't have to take it directly to the court because previously in the Dependent Adults Act your only remedy was to take it to court. So this whole process from 75 on is really around having a system to safeguard the person's needs, keep it independent from the person who is being investigated, allow the voice of the adult to be heard, and then remedies to resolve the issue, the remedies being education, mediation, or taking it back to court. So the court is seen as a last resort after an investigation, but the idea is that somebody independent from the situation is looking at it.

The Chair: Okay. Mr. Dallas.

Mr. Dallas: Thank you, Mr. Chair. I guess I was fearful this was where the discussion would evolve. The issue really is around an examination of the complaint process and whether it would be effective in a variety of situations. You know, if there were examples, I guess, where situations might fall between the cracks, then we could have a discussion about what other types of oversight could be provided, but essentially the court needs to be the last resort in this, whether that's a great thing or a not so great thing. There needs to be a final decision-maker on this because these types of decisions are not typically afforded to an ombudsman-type position. Their role is one of identification, investigation, and mediation, but the final imposition of solution is typically not accorded to an ombudsman.

I guess my point is that that, in the end, would be less definitive than the process that we have outlined here now. The reason that I suggested that the discussion around alternatives would be good for another day is because typically the oversight for a position like that would apply to a variety of acts as opposed to a specific act. That's the point I was originally trying to make. I think the court needs to be the place of final decision, as outlined in the legislation.

The Chair: Ms Notley, did you have a final comment on this?

Ms Notley: I do, yeah, and probably not the final.

It's quite true that the court does need to be the final resolver, the final place of resolution, and the court is the final place of resolution for every administrative tribunal, but administrative tribunals of differing levels of complexity with different types of processes are set up all over the place with a view to try and resolve those issues before you get to the court. You can look at something like, you know, the Labour Relations Board, and there are three or four levels before you actually get to a court. Then there are other things where there's only one.

The concern that I have here: we talk about the investigator having an opportunity to look at all this kind of stuff, but what jumps out at me is section 76(2), which is where the complaints officer has the ability to simply stop it right there so that it never even gets to an investigator. At that point the person who has filed the complaint has no further remedy within the process as it's currently being set up. So it's not a question of an investigator coming in and working it through and checking it out and talking to various people and all those kinds of things. What happens is that there is one complaint, and the complaints officer right there can say: no, I'm not moving this any further. As this is structured now, the only remedy available to that person is to leap all the way into the court situation. You know, I'm sure there will be a thousand different ways to resolve the issue before you get to that, yet unfortunately the way this is structured, that's what happens. The investigatory process is good. I agree with you that it's good. I appreciate that it's built in there to try and find a way to resolve these issues earlier and more effectively, but the way it's structured now, the complaints officer has that ability to shut it down right there, and the person has no ability to get any kind of independent second review of that issue.

I appreciate that it will be policy that it's an independent person that reviews the complaints that are made against the Public Trustee, but frankly I think that's something that also on the face of it should be included in the legislation, that if the complaint is actually about the Public Trustee, it should be clear that it's an independent complaints officer that does not work for the trustee and that does not have a financial relationship with the trustee as a contractor who is doing those reviews.

Then just the whole sort of internal institutional element of it is a bit of a concern if that's the last place you have before you have to walk into a courtroom. I would rather see there be some halfway point for the person to get their issue resolved. I'm not saying that the mental health advocate has to be the way it goes, but that's an example of where somebody can come in for some people and try to resolve the issue before someone has to march into court.

These are really key issues. These are complaints about, you know, how people live, the very nuts and bolts of their day-to-day

life: whether they can go out, whether they can go to the park, whether their house is clean, whether they feel safe, all those kinds of things. They're very fundamental to the life and security and well-being of people. This isn't a bylaw about, you know, whether they mowed their grass too short, right? This is fundamental stuff we're talking about here.

The Chair: If I could suggest, this sounds like it is one that should come back on the list for further discussion. In a report to the Assembly subsequent to a bill's first reading the committee has the option to provide specific proposals. It also has the option to provide observations and commentary. I'd ask you to keep that in mind. If between now and the next meeting there is a specific amendment, a change to this process, or a model that you want to suggest, could you communicate that through the clerk to the LAO research staff. Then that could be noted in the materials that are prepared for us for the next meeting so that there's actually something specific on the table to talk about. I appreciate, you know, the need to talk about the principles and so on, as you have done, but I think it would just help us to move it forward if, in fact, there's a decision to pursue this in our report. Is that reasonable, folks?

That would move us, then, into the next section, which is just entitled General, on page 6. The provision here is section 80 on review officers. Stephanie, could you elaborate on this, and could you perhaps remind us which of the submitters raised this question about the need for review officers?

Ms LeBlanc: Sure. It was the law firm Bennett Jones that brought forward this question about whether review officers would be a necessary position or whether they would, you know, delay applications. The responsibilities of a review officer are set out in section 80 of the bill, and it's basically someone that would write a report, who would speak to the adult. You can see in (a), (b), and (c) that they would report back on the views and wishes of the adult, "the suitability of each proposed co-decision-maker, guardian or trustee and any proposed alternate guardian or trustee, and . . . any other matter prescribed by the regulations."

11:20

The Chair: Okay. Thank you. Is it the committee's wish to pursue this discussion on this item further? No? Okay. Thank you.

We'll move on, then, to 2.19, section 84, testamentary authority of the guardian or trustee. Should this section be amended to permit trustees or guardians to make changes to beneficiary designations? The second question: should this section be amended to permit trustees or guardians to change accounts to joint ownership with a right of survivorship?

Stephanie, can you refresh my memory? This was the Royal Bank of Canada?

Ms LeBlanc: That's correct. The Royal Bank and another submitter as well.

Dr. Massolin: The insurance bureau.

Ms LeBlanc: Yeah, the insurance. The person that was from the insurance.

The Chair: Canadian Life and Health Insurance Association.

Ms LeBlanc: Section 84(1) states that "a guardianship order or trusteeship order is not of itself sufficient to establish that the represented adult who is the subject of the order does not have legal capacity to make a testamentary disposition." So that's something like a will. That section simply states that just because you have one of these orders doesn't mean that you necessarily do not have the capacity to make a will.

Then that's followed up by (2), which states that a guardian or trustee does not have the power to make a testamentary disposition. A guardian or trustee is not permitted under the bill as it is now to make a will, but the concern that was raised is that this would also not permit a guardian or trustee to change a beneficiary designation in a life insurance policy, an RRSP, or something like that, and also the question of converting one instrument to another. I know the department had some lengthy comments on this, so perhaps that's a question that can be further directed to them.

The Chair: Does the committee wish to pursue discussion on this?

Mr. Olson: I'd like to just make a comment. No, I don't. I have a feeling that there is probably near unanimity on this. I just wanted to make the point that I don't see it as government's job to do retroactive estate planning for people. People have a duty to arrange their own affairs. It is true that some people will slip through the cracks because maybe they won't have had an opportunity, but I think there are mechanisms in place. I just don't think we should step over that line.

Mr. Denis: I would just like to echo Verlyn's concerns.

The Chair: Okay. Thank you.

Am I correct, then, that we're in agreement? We won't be pursuing this area further? Okay. Thank you.

Mr. Vandermeer: You're talking about the first portion, right?

The Chair: Sorry, Mr. Vandermeer. I was talking about the whole thing. Go ahead. Did you have further comment on the second question posed there?

Mr. Vandermeer: Yeah. I have a question on the one about trustees or guardians changing accounts to ownership with the right of survivorship. I was surprised when I found out through personal experience that that actually can happen. You can have a joint account with somebody to take care of their affairs, and when that person passes away, you can just keep that account for yourself. So if that person is dishonest and doesn't put it back into the estate, that money is just gone. I was surprised that that even exists today. I think that that should be changed.

The Chair: Okay. Maybe I could ask the officials or some of the other lawyers in the room to help respond to this.

Mr. Bowes: On the specific question that was asked by the submitter about changing accounts from sole ownership or property from sole ownership by the represented adult to someone else, the act as it's written now allows for regulations that would say that there are certain things you can't do without a court order. In light of this particular comment, I think that one of the things that we would consider doing is saying in the regulations that you cannot change an account from sole ownership to joint ownership without court authority. Then you would have to convince the court, and I think that you would have some difficulty convincing the court that it would be appropriate to allow you to change an account from sole ownership to joint ownership. In discussion we couldn't rule out the possibility that you could think of a good reason, but I think that

they would be hard to come by. This pointed out something: yeah, I think it would be useful to clarify that you can't do that without specific court authority, and we could do that through regulation.

Mr. Vandermeer: But even if they got the authority to do it, my concern is the right of survivorship – right? – that the person that has the signing authority on the account suddenly becomes the owner of that account rather than that it goes back to the estate.

Mr. Bowes: I think that joint ownership with right of survivorship is something that we wouldn't be addressing in general in this legislation. It goes well beyond this legislation. I will say that in many cases if you transfer property, if you own property and you put it in a joint name of yourself and someone else, the court would presume that you haven't done that with the intention of making a gift; you've done it with the intention of administrative convenience. So when you do die, they would be holding the property in a resulting trust so that although they would be the legal owner, they still wouldn't be the beneficial owner of the property. Again, that's not specific to this legislation. It's a general concept with joint ownership and the right of survivorship. In this particular context what we're trying to make sure of is that the trustee doesn't transfer property into joint ownership unless they've convinced the court that there's a very good reason to do so, which I think would be quite difficult to do.

Mr. Vandermeer: Okay.

Mr. Olson: I agree with all those comments. I was just going to say that I guess there's a difference. If I choose to put something in the joint names of myself and somebody else, then I've made that decision, and I should know that, luck of the draw, whoever lives longest is going to end up owning it. I've made the decision; I've made the disposition. That's fair enough, and it's actually a great tool. It's a great estate planning tool. But for somebody else to make that decision for me and control what's going to happen to my assets I think goes way beyond what we should be contemplating in this legislation unless, as you say, a judge has been persuaded, and I doubt very much that that would happen very often if at all.

The Chair: Thank you. Great. Okay.

This would, then, let us move on to the next section, specific decisions and emergency health care. Stephanie, I'm going to ask you to elaborate on this. There are a lot of questions posed in this item.

Ms LeBlanc: The first item in that, issue 2.20, is whether the health care provider should be required to select a specific decision-maker where there is no guardian or trustee. That's in a situation where the health care provider says that a decision has to be made, and it's a question of: should the health care provider have to make that decision, or should there be another method set out in the act that determines who should be the person to make the decisions for the adult?

The Chair: Okay. Comment?

Ms LeBlanc: I'll just add to that. The concern of the submitter in that case was that especially in situations where families are divided, it can be a very difficult decision for the physician or whomever the health care provider is to make.

The Chair: Okay. If I could, just for clarity, for my own sake, I'm going to ask again for one of those practical walk-throughs, how you would envision this legislation in practice.

Ms Doyle: Okay. In the supplementary information we provided the example of Anthony. Anthony is a young man who has been involved in a car accident, never had a guardian or an agent appointed. He wasn't planning ahead. He's come in, he is treated at the emergency room, and the emergency provisions kick in in the act then, so the doctor is able to keep him alive and do what's necessary at that point. Then he survives well but doesn't recover his capacity.

11:30

There are decisions that need to be made during that time before there can be a guardianship order. He may have decisions around continuing medications, possibly surgery, possibly supports, and also where he may live in the interim, if he needs to go from the Royal Alex to the Glenrose, if that's a decision that would need to be made. The doctor under the emergency provisions doesn't have the ability to make all of the decisions after the emergency is over.

If there is no guardian – and knowing that we do have the temporary guardianship order, that you could possibly get into court quickly – the normal process of getting a guardianship order takes time because you have to have a capacity assessment, and you have to gather the information to make the application. For Anthony in this situation it's the idea that before there is a guardian who is appointed or before he recovers, somebody can make some decisions.

What the doctor would do is look at the legislation and decide. You know, because it's discretionary, he could say: I'm not going to make any decision until there's a guardian. Anthony stays in the hospital, then. If the doctor chooses to say, "I want to use this specific decision-making tool," he goes to the list, and on the list is the nearest relative. If Anthony had a spouse, he would go to his wife and say: can you make this decision? If he didn't have a spouse, then he'd go to his mom. If there was no mom, then he would go down the list to see if there were any siblings or children who are over the age of 18.

What the doctor is looking at is that a decision needs to be made. He has talked to Anthony, and Anthony can't make the decision because Anthony is unable to consent. It's an assessment that is based on: can he understand the information, the consequences and the alternatives, or not? So he's talking to Anthony. Anthony isn't able to understand what's being asked about surgery. Let's take the example of surgery. Then the doctor goes to the next on the list who can make the decision. Anthony's mom can make the decision. Anthony is notified. The family is notified. So there is a process of looking at who the decision-maker is and the decision. It's the idea that there is a tool so that a health care provider can have some comfort that they've gone to the right person, that there is some screening of suitability.

One of the issues that we heard in the consultation is that they didn't want it automatically to be the oldest person in the family because maybe that oldest person in the family hasn't had contact with the person. You may have an oldest brother, but that person has been away for several years and wouldn't know what Anthony's circumstances are. So the idea of contact, being 18 and able, the idea that the person isn't incapable, that they don't have a guardian for themselves. Anthony's mom can make the decision, and Anthony can get the treatment.

The Chair: Okay. Thank you.

Any discussion on this point?

Ms Notley: Sorry. I feel like I'm unnecessarily dragging things out. With that scenario, I was looking for the actual document. I know you did provide it, and I didn't have it in front of me. I guess my concern with this provision is this. There is some guidance given to the health care provider, but where it gets ugly, ultimately there is almost no guidance given to the health care provider.

If Anthony is 21 and mom and dad divorced four years ago because mom is a Jehovah's Witness and doesn't think Anthony should get a blood transfusion and dad is not supportive of that view anymore, then the doctor suddenly has to become the wisest, most ethical, you know, Moses on top of the mount kind of player in the room to be able to sort that out. I'm not entirely sure how it is that we're sure that the doctor doesn't then have to explain that situation ultimately in a court of law, when the other spouse decides that they're very unhappy with that decision. I have concerns. Doctors are trained and they're experts at making decisions on what is the best health care, but they're not experts at making decisions on how to resolve disputes between two parties who have equal rights to have input into that decision. That's not their expertise.

The Chair: Would you like to respond to that?

Ms Doyle: You're right. There are situations in all families, especially when someone has gone through a very traumatic injury, that bring out lots of emotion and lots of conflict. I would say that in the situations where a person has religious views about treatment that are in conflict with the adult, then that would be a dispute. Where a doctor senses that there is a big battle brewing over the decision, I think they would probably step back and say: I want someone who has legal authority; I want a guardian here.

This is discretionary. We've set it up that it's voluntary to use this tool. This is more for, I think, the vast majority of situations where a doctor goes to a family member and says: can you make this decision? Most of them go well. For the ones that are very disputed and very difficult, guardianship is the tool because you're taking it to the court and you're choosing the right one. The idea of this one is that if there's a big dispute, this is probably not the remedy. This is for the majority of the situations where, you know, something happens unexpectedly, and family have to step in.

The other remedies that are in the act are that if there is a big dispute, they can have the opportunity for the person to have a full capacity assessment to determine whether or not they can make the decision for themselves or they can take it to court.

The Chair: Do you want to follow up on that?

Ms Notley: Just a quick one. I guess my concern – and maybe you guys can tell me if there's been any thought given to this – is that it's stated that the doctor has that option. Of course, the doctor walks into the room. He's got 20 other patients. He assesses the situation in about three minutes. The doctor for whatever reason may think that there is a dispute brewing. If he chooses not to exercise that opportunity and chooses instead to wait to get a better sense of authority and then something bad happens because they didn't exercise that ability to move forward with the treatment, where does that put the doctor?

When you say that it's voluntary, the doctor has to engage in this assessment: will I exercise this authority, or will I not exercise this authority? Do I know enough about the situation to decide whether I should exercise the authority, let alone how I should exercise it? So, really, the major decision still rests with the doctor, and the liability for that decision still rests with the doctor, I suspect. I could be wrong. Saying that it's voluntary just means basically that it moves the doctor back one step in trying to make a very weighty decision in a circumstance where, again, in an emergency room he's probably got 20 other patients, and he's probably assessed that situation for three minutes – or she has – unless I'm misunderstanding.

Ms Doyle: I think that if it's the emergency room, they're probably going to use the emergency provisions, not this provision. This is for after the situation has settled down, and other decisions are needed. Using the emergency provisions in the act, where the doctor can look at the situation and go to another doctor, I think would be the most common practice.

The only other information I'd provide on this – and I don't want to belabour it – is that these provisions are very similar to Ontario. They've been using it for, you know, 17 years. B.C. has been using it for eight years. Saskatchewan. Almost every jurisdiction has something like this. We've based it very much on that legislation to see what's workable.

11:40

The Chair: Thank you.

Dr. Sherman, followed by Mr. Olson, please.

Dr. Sherman: Thank you for that clarification. Typically what happens in an emergency situation is that, number one, it's best if the patient can give consent. This is for when patients can't give consent. The next step that we look for is: is there a guardian or a trustee? If there isn't, as a health care worker, a physician, you have to do what you have to do. Therefore, you typically get a two-doctor consent. In emergency cases if someone needs an operation, we'll get a colleague. If they concur, then the decisions are made by the physicians for the care of the patient.

With respect to selecting decision-makers, that becomes a difficult point. I'm not so sure that a lot of physicians would want to make that decision with respect to making decisions for their patient. You'll have situations where – gee, I've had every situation there is. You'll have three different family members who all show up, including the wife. They all have their own lawyer, and they all disagree. That's a position physicians don't want to be in. The spouse may be an estranged spouse. They may make a decision that's not in the best interests of the patient. You'll have a family member who's extremely emotional, and they're not capable of making a decision. This is a very emotional time for family members. You know, sometimes you phone family members. You don't want to tell them anything on the telephone. They forget who called. They forget what the problem is. They forget which hospital their family member is at. I'm not so sure many of my colleagues would want to be in that position, to decide who to make that decision for a patient.

For instance, many times we apprehend children. Decisions need to be made. We feel it's the right decision to be made. The parents may disagree. In that case we apprehend the child. We call social services. We get the courts involved, and that's done immediately. It's a phone call to a judge. I don't know why that remedy couldn't be used in this situation, why it takes so long for the courts to make that decision because we do that already with child welfare in children's cases. I don't know if you can answer that question.

Ms Doyle: Maybe I'll just rephrase it and see if I'm understanding it correctly. You're wondering why the courts cannot intervene quickly in situations of making a health care decision for someone, or are you talking about apprehending children?

Dr. Sherman: For a designated decision-maker, for who's going to make that decision for that person after the acute emergency is over: why does it take so long for the court? We already do this with young children if we have to apprehend them. The courts get involved. It's a five-minute phone call.

Ms Doyle: I guess that based on the information we heard in the consultation, if I could just speak to that, people wanted as much as possible to avoid court where they could, to use the natural family system. We also heard from the courts. It's difficult to get into court. It does take time, and these situations are time sensitive. Those would be some of the responses. I don't know if my colleagues have anything more to add.

Dr. Sherman: Typically what we would do is involve a social worker. The social worker would liaise with the family and liaise with the judge, and they would come to a reasonable compromise with the family in that respect.

Ms Doyle: This provision is very similar to what happens in the Mental Health Act, where someone is under the Mental Health Act, a formal patient, where someone is not able to make a decision. They've been assessed as not able to provide consent to treatment. Then they go through a rank list. First they start with an agent or a guardian, and then they go to the rank list of the nearest relatives. Then whoever is selected has to give a written declaration to say that they meet the criteria for being a suitable person to make the decision and that they will follow the duties as required by legislation.

The comfort in the person providing a written declaration is that they're owning up. They're saying that it's not just on the physician to choose them. The adults themselves are coming forward, the specific decision-maker, and saying: I'm a person willing to take on this responsibility, and I will act in accordance with the legislation. We paralleled it very much to what is already in existence in Alberta under the Mental Health Act for those types of situations.

The Chair: Thank you.

Mr. Olson: I was going to pass, and I think I will. I think most of what I wanted to say has already been discussed. I have a feeling we might get a chance to discuss this again in the future, so maybe I'll come up with a question then.

The Chair: Okay. Thank you.

Ms Pastoor.

Ms Pastoor: Yes. My question would be: what time frame are we looking at when all of these people are contacted? I mean, once the emergent situation is over with, what's the time frame, and where is this person in the meantime?

Ms Doyle: The time frame that someone is asking for a decision to be made?

Ms Pastoor: Yes. The emergent situation is over, the doctor has made the decision about the treatment, and now we've got this person sitting there. But to make further decisions, what time frame is in there? You have to try to track down the family and all these sorts of things. How long does that take?

Ms Doyle: I think what we would use is the experience of other provinces in what happens. In British Columbia it's fairly quick. The idea is that someone selects the person, and they're notifying them pretty rapidly, within a day. Then they have some remedies of kind of a waiting period for if someone wants to appeal, you know, who has been selected or the decision. Then they make the decision.

For temporary placement – if you notice that there's a temporary placement as well as a health care – we are defining that by regulation, how long that decision can be in effect. It's the idea that it's not forever; it's for a temporary period of time, less than a year.

Ms Pastoor: That still didn't get at the point that we've got the person sitting in the bed, and we need to be able to track down. You're saying that they can do it within 24 hours in B.C.?

Ms Doyle: What they do is they select the person during that period of time, and then the person who has the responsibility to act as the decision-maker has to notify people. That notification usually happens pretty quickly. They allow around phoning a person as opposed to a personal service. You know, it's a bit different than the guardianship process.

Ms Pastoor: Right. Thank you.

The Chair: Thank you.

My reading of the discussion, then, would be that this is something we would want to possibly revisit, then. I'll make the same request, if I could, as I did with the last item. Given that we've been having a more general discussion, if there are specific changes to the legislation that you would like the committee to consider for its report, then prior to the next meeting please pass those along through the committee clerk to the LAO research staff. Then those can be incorporated into the documentation that comes to us.

The next item is somewhat related. I'm not sure whether it's your will to try to narrow this out and discuss it specifically or whether you'd like it dealt with as part of the general discussion around specific decision-making in emergency health care. This has to do with the specific criteria under this section. The submitter was raising the question: should the criteria be something that the court should determine, and is there another set of criteria that may be more appropriate? Any particular comment on this now, or do you want to leave it to the next meeting, where we have the general discussion around the specific decision-making provisions in the bill? Okay. Seeing none, I think we'll deal with it that way, then, if that's agreeable.

I'm going to pose a question to the committee, then. We have two sections remaining to discuss plus any other items that members would want to raise that aren't covered in the report. We could go on and complete the next two sections, or we could take a shorter lunch break, if you're agreeable, come back and finish everything up. Either way I suspect we're going to be finishing earlier than the 4 o'clock end time given the amount of ground that we've covered this morning. What's your will?

11:50

Mr. Denis: I'd prefer to push forward.

The Chair: Do you want to push forward a little longer?

Dr. Swann: I'd prefer a break.

The Chair: Okay.

Mr. Vandermeer: Is lunch ready?

The Chair: Lunch is ready.

Mr. Olson: If we push forward, does that mean we don't get lunch?

The Chair: It could. It all depends on what people have in mind.

Would a short lunch break be agreeable? Dr. Swann, would 30 minutes be sufficient?

Dr. Swann: Absolutely.

The Chair: Can I suggest, then, that we reconvene at 12:20? Lunch is served.

Mr. Denis: Mr. Chair, I'll call back in at 12:20.

The Chair: Yeah. You don't get lunch, Mr. Denis, unfortunately.

Mr. Denis: You know, we keep on working in beautiful Calgary-Egmont here.

The Chair: All right. Well, thank you very much. We'll see you at 12:20.

Mr. Denis: Thank you.

[The committee adjourned from 11:51 a.m. to 12:22 p.m.]

The Chair: Thank you, everyone. We're back on the record, and we're continuing our review of the focus issues document prepared by the Legislative Assembly Office research staff. We're on page 7, under the heading Capacity Assessments, and we're now looking at part 4 of the bill. Again, there are a number of questions posed under this section.

Stephanie, perhaps you could sum it up for us.

Ms LeBlanc: Sure. The first question asks: how should capacity assessor be defined? This is the person that carries out the capacity assessment. Concerns raised by submitters were that it should not be extended beyond physicians or a psychologist. In the bill as it is now that definition is left to the regulations, but it may be something the committee wishes to discuss.

The Chair: Just on that point, then. Currently this is left to be defined in regulation. That's correct?

Ms LeBlanc: That's correct.

The Chair: Okay. And that includes the criteria for capacity assessment as well, correct? I'll ask first if there's any discussion or any desire to pursue this.

Ms Pastoor: I'm very sorry for being late. Where has the conversation gone so far?

The Chair: We're just starting; not a problem. I'm asking if the committee wants to pursue any discussion on capacity assessments.

Ms Pastoor?

Ms Pastoor: Yes. I agreed with – and I'm not sure who brought it forward. It might have been the head of the Alberta Medical Association. Of course, I would prefer nurses, particularly nurse practitioners, to be involved in this; however, if I had to forgo that to ensure that it was just physicians or psychologists, then I would do that.

One of the arguments that the doctor had brought up was that physicians are the ones that really can diagnose disease processes or other things that they may have to diagnose. Well, psychologists can't do that. Psychologists really are for the mental side of it. That's why I would like a nurse practitioner in there, because they can. They certainly can't diagnose, but if they've worked with these people for any length of time, they certainly know and would have some kind of a medical workup that they would be working off of. I would like to see it only be physicians and psychologists, but I also would like to include nurse practitioners, particularly because of the problems that we have in rural areas.

Dr. Swann: Well, I would certainly support the expansion of the scope of nurses and nurse practitioners to be party to or even sole assessors for capacity. I think they're trained to do that, and especially in outlying areas, rural areas, northern areas they could well make it a lot more accessible and have appropriate referrals made for guardians.

Thanks.

The Chair: Thank you.

Anyone else on this point?

Dr. Sherman: I would support the nurse practitioners working in collaboration with physicians. I think it's through collaborative work that better decisions will be made. I do understand that nurse practitioners are quite well trained above regular nurses, but I'm not sure what the level of training specific to this area is. I think if they work collaboratively, there's a role because certainly in underserviced areas there aren't any physicians. I know many nurses go out there. They do have to make decisions, and in fact they do consult with physicians.

The Chair: Thank you.

Ms Pastoor: Consulting could well be over the phone with the physician – right? – with the nurse that might be out. Would that be consultation? Would that suffice?

Dr. Sherman: Well, the reality is that decisions need to be made, and I think consultation is the most appropriate forum that leads to the right decision.

Mr. Quest: I'm not a medical professional, but I'm just wondering, if we're broadening it out, if it would be worth considering occupational therapists also working in collaboration with the physicians since their specialty is rehabilitation and assessing what these patients will and won't be capable of doing in the future.

The Chair: If I could just make an observation, I'm kind of thinking ahead to our product, our report. In this case we're dealing with something that's mentioned in the statute but that will actually be codified in a regulation that has yet to be drafted. We certainly have the option of providing some observations and comments in terms of this regulation when it is developed. There's also the opportunity to make a recommendation that the regulation, once drafted, come back to the committee for further review. There would also be the option for just a general recommendation to the minister that this be reviewed by the committee and the minister. The minister could then choose to bring it back. So there are a number of options.

I guess one thing that is not on here that was raised that's kind of a companion issue is the criteria that will be used to determine capacity. I just sort of offer that. I know it's difficult for members because we actually don't have a draft regulation in front of us. We

have some signals in the statute of what might be there, but on a practical level there isn't really something before you to review. I guess my question is: would we want to come back to this question when we get to the consideration of our draft report, or are we content to leave it as is? We can certainly provide in our report, as I say, some observations and commentary based on what has just been said.

For the listening audience, there are some heads nodding, suggesting that perhaps that might be useful.

12:30

Ms Pastoor: I think that I'd like to take perhaps one more kick at the cat in terms of discussion around the table. When might we get that draft? Are they in the middle of drafting this regulation that you were talking about? How close are we to that?

Ms Doyle: We wouldn't have the full regulation until after the bill is passed. That's when we usually are kind of going into more in terms of the drafting. Some of the work that we've done in research around the capacity assessment has been the work of the subcommittee that's been involved in that and in looking at guidelines. But at this point we don't have a draft regulation in this area.

The Chair: Okay. I'm going to suggest, then, that we ask that the draft report perhaps include a piece based on some of the observations and comments that were made by members. Then we can revisit that when we look at finalizing our draft. Is that agreed?

Hon. Members: Agreed.

The Chair: Thank you.

The last section is general issues regarding the bill. Section 2.23 is support for represented adults. Should represented adults in certain circumstances be provided with independent legal counsel and advice? Should there be a person independent to the situation who can give information to the represented adult regarding his or her rights? Stephanie, correct me if I'm wrong, but I think this came from the Mental Health Patient Advocate submission.

Ms LeBlanc: That's correct. I think both points here were raised in the submissions of the advocate.

The Chair: Any discussion on these points?

Ms Notley: I guess, you know, putting on my legal hat and making sure that everybody gets their position articulated in as many independent forms as possible, I suppose I would just sort of say in general at this point that I think that maybe we should have a little bit of consideration of the points put forward by the mental health advocate here in terms of how we might address the inability of the represented adult right now to get any kind of independent advice. Presumably, if the mental health advocate brought it forward, it's a problem that they've seen. I don't know if it's possible to bring it back and get a bit more specificity on the issue. I don't have their submission in front of me right now, so I can't remember the details of it. I'm reluctant to just completely ignore the concern addressed because I do recall it from the discussion, and I recall it being a significant point.

The Chair: If this is helpful, we can certainly come back to it. There is a supplementary submission from the Mental Health Patient Advocate that might be useful. In the department's response to the submissions there is also some commentary on this issue that might be useful.

Any other comments on this point? It very much echoes our discussion of the earlier section of a potential role for the Mental Health Patient Advocate or an ombudsman. It's a similar issue, the same issue, I think.

Okay. If there's anything further, Ms Notley, that you might require, just perhaps let the clerk know.

Ms Notley: So we can bring this back for a quick discussion, maybe no discussion, once I look at this.

The Chair: Yeah. I was just saying that we already discussed basically the same issue earlier under the question of an ombudsman or a role for the Mental Health Patient Advocate, so it's on the list.

Ms Notley: Okay.

The Chair: The last item noted in this report is 2.24, potential or perceived overlap between the Mental Health Act and this bill. There is a question posed here – there may be some others that you want to address as well under the same theme – that before permitting a guardian to make a mental health decision, should the onus be put on a physician to ensure that the guardian has the appropriate authority? In the case of a formal patient under the Mental Health Act who also has a guardian, should the bill require physicians to assess competency under section 27 of the Mental Health Act and issue a form 11 where the guardian is consenting to treatment? And so on. Sorry. I don't need to read that for you. Stephanie, these are all related questions. Any further comment or clarification?

Ms LeBlanc: I don't think I have any further comments here. There are very, sort of, specific comments brought forward by the advocate in terms of making sure that there's no conflict between the Mental Health Act and Bill 24. My understanding was that the main issues where this would come up are especially in what the advocate's role would be, where a complaint would be made, and whether a person would have access to the appeals provisions under the Mental Health Act. The department might be able to discuss that further.

The Chair: Okay. Just the members, first of all. Any questions or comments so far?

I'm just going to add that the specific example that was cited by the Mental Health Patient Advocate was a situation of an individual with a guardian where the guardian might consent to mental health treatment on behalf of that individual in a hospital compared to a situation under the Mental Health Act where a form 1 has been issued and the patient is ordered to receive an assessment and potentially treatment involuntarily, the difference being that under the Mental Health Act the patient would have access to review panels and, you know, other means to contest the decision to provide the treatment. I think the concern under this act was that same protection wouldn't be afforded if a guardian consented to mental health treatment on behalf of the individual. I'll just ask the officials: is that a fair recap of that issue?

Ms Doyle: I think the issue in case study 1 that the advocate presented was a person who was there on a voluntary basis, but the guardian had made the decision for them to be there. So it wasn't a formal patient. The person who was there on a voluntary basis was wanting to leave, and they were going to the health care provider saying: I want to leave. The health care provider was saying: well, no; the guardian has made a decision. When the advocate presented this to me and we had a discussion, I said: the person is free to go. You know, even the guardian cannot enforce that the person stay at

the mental health facility. They are able to go. That would be the advice if the health care professional was phoning their legal counsel to say: can the person go or not? They have the remedies that if the person was refusing to go or they were concerned about the actions of the guardian in making that decision, then they have the complaint process.

The other one was where a person is a formal patient. Then they would have all the remedies under the Mental Health Act, which is going to the Mental Health Patient Advocate.

Ms Pastoor: I'm just going to do a practical thing here. The person has been not admitted but put in, I guess, the institution or the treatment centre, but they say that they want to get out. Who assesses that that person is actually competent to make that decision? I mean, if they're addicted, if they've got a mental issue at the time, who assesses that they actually can make that decision?

Ms Doyle: The physician. The person who is providing treatment would be the one who would go to the person to assess whether or not they can make the decision. That's the practice. They go to the person first, and if the person can't make the decision, then they go to whoever has the authority. So if the person wanted to leave and the physician felt that they shouldn't leave because now they're a danger to themself and they can't make that decision, then they would probably go with the provisions under the Mental Health Act. That would kick in.

Ms Pastoor: Okay.

The Chair: Is there a wish to sever this part for further discussion, or is the committee content to leave it as is?

12:40

Ms Notley: Would you mind if we could? I just haven't had a chance to read through. I know the additional submission was sent to us a day or two ago, but I haven't had a chance to actually go through it. Maybe there'll be nothing at the end of it, but if we could leave that opportunity there.

The Chair: Certainly.

That, ladies and gentlemen, completes our review of the focus issues document. Thank you very much, Philip and Stephanie, for your work in putting this together, and thank you to the department and the Public Trustee for the supplementary submissions as well as to the Mental Health Patient Advocate.

Perhaps I could talk a little bit about process. As we talked about at the outset of the meeting, the idea, then, would be that for those areas we had flagged as possible areas for committee recommendation, a draft document would come back to us before our next meeting with those issues, and we would have an opportunity prior to meeting again to consult with our constituents, stakeholders, colleagues on those areas and then come prepared to the next meeting of the committee to make some specific decisions regarding recommendations to the Assembly. That's what we had discussed at the beginning of the meeting as a likely process. I guess, before we just kind of close off this portion, are there any other issues that weren't reflected in this document or in any of the other documents that we received that you would like severed off or, as Mr. Dallas has said, flagged to be part of the next document that comes forward?

You know what? Your chair left off the last page. Sorry. Please be thinking about that as we finish the last two sections. My apologies. Page 8 of the document, issue 2.25, training requirements: should lawyers who advise represented adults on these matters be specifically trained? Stephanie, can you remind us which of the submitters proposed that?

Ms LeBlanc: It's the advocate who put that submission forward.

The Chair: Comments on this one?

Mr. Denis: Mr. Chair, I have a bit of an issue with that. Lawyers are trained, as the lawyers at the table know, through the Alberta bar admission course. That perhaps could be put in there, but I don't think there should be specific training for lawyers beyond that.

Dr. Swann: Would you repeat that, please? I didn't get it.

The Chair: Jonathan, would you repeat that, please?

Mr. Denis: Sorry. The essence of my comment, Mr. Chair, was that lawyers are trained, as the lawyers at the table will know, through law school as well as through the Alberta bar admission course subsequent to one year of articling. If you wanted to, you would have to talk to the Law Society to include that in the bar admission course, but I don't think there should be any requirement after that.

Mr. Olson: No, I'm not in favour of a provision that would require special training either, although the Legal Education Society continually has courses for lawyers who are interested in learning about process in specific areas. There are lots of these kinds of courses. Lawyers who wish to learn more have the opportunity. I think that should be sufficient.

The Chair: Anything further? Do other members of the bar want to comment?

Ms Notley: Since you ask, it's a rare case that you'll hear me say this, but I really think that this is something that's better left, well, probably not even to regulation but to policy on the part of the ministry to decide what interaction they want with their stakeholders.

The Chair: Okay. Thank you. We won't be pursuing that one.

The final issue is 2.26, review of the draft regulations. Any discussion on this?

Seeing none, I guess I'd go back to my earlier question: is there anything in addition to what's been outlined in the document here that you'd like to raise at this time?

Mr. Olson: Excuse me. Can I just ask about 2.26? What's our position on that one, then? Are we saying we're neutral? The people who made those submissions, if they were to ask us what we did decide: are we saying that we don't have a position on that? For myself, anybody who wanted to look at the regulations – I mean, they certainly don't have veto power, but I don't mind getting input from people. I would be okay with it.

Dr. Swann: I would support that as well.

Ms Notley: Yeah. I agree, actually. I saw it going by very quickly. I suspect, just based on what we've heard from people on staff, that there has been quite a bit of consultation already, and I actually wouldn't be surprised to see that there was a lot more as they went. We can certainly as just a recommendation, not as part of the legislation but just as an observation – there were obviously some

fairly engaged stakeholders that indicated desire – that we would support that desire, or something like that, to be consulted further on.

The Chair: That's an easily made recommendation in our report, so we'll include that one.

Anything further? Okay. Well, thank you very much for all the preparation and the good discussion on the review of the bill.

Just to go back to the agenda, we'd be at item 6, Consideration of Public Meeting Requests. I was just going to sort of recap what we talked about at the last meeting. Under the standing orders there is a provision for policy field committees to hold public meetings, which are essentially opportunities for groups and individuals who have requested to appear before the committee on any topic to come in and make a presentation.

We agreed at the last meeting that some requests have come in during and subsequent to the spring session, and those were summarized and precirculated. You have a list before you of all of the groups and individuals that have contacted us. The suggestion was that in terms of efficient management of the committee business we would attempt to designate one or two meetings during the next year, and those meetings would be specifically for the opportunity for these groups and individuals to come in and speak to the committee. We would designate those as public meetings and advertise them as such on our website. You have the list before you, and the question of scheduling I'm going to leave to the clerk.

What I wanted to raise with you today was just this list and whether there are any comments for groups you would like to hear from, groups perhaps you don't feel the need to hear from. We can make that determination now, and then we can adjust our schedule accordingly. Mr. Vandermeer.

Mr. Vandermeer: Yeah. I don't have a problem meeting with any of these associations. In fact, I think it would be beneficial for us. One suggestion I would like to make, though, if we go ahead with that, is that we set the meetings up in such a way so that one group is waiting in the wings while one group is presenting for the sake of efficiency so that we can get through our day. If it goes faster, we can just have the other group come in right after the first group, and so on.

Mr. Denis: That's a good idea.

Mr. Dallas: Mr. Chair, I would concur as well. I wonder, though, if just to provide guidance to groups that might be contemplating where best to present their message, whether it be to this committee, directly to a ministry, or in other forums, if we were just to develop some fairly basic guidelines, I suppose, that would be instructive to groups about the type of information that would be best received by this particular committee. Without having any specific examples, I suppose, I might suggest that presenting asset-involved financial consideration or the like: there are probably better forums for that. You know, if we thought about some type of just basic guideline, I guess, so that a group would have a little comfort before they went to the effort of preparing a presentation and coming to Edmonton, that they were in fact presenting to the most appropriate group that would serve their needs.

12:50

The Chair: I think that's very good advice and something where, you know, you can rely on your chair in consultation with your clerk. We haven't had a situation like that arise so far, but it potentially could, particularly during the budget process, so I think that's good advice. To the extent that you're comfortable with the chair ensuring that the group understands the mandate of the committee, the policy areas that we oversee, and that sort of thing, we would make that judgment accordingly.

Corinne has just advised me as well on the point regarding the time allocation. We used 15 minutes for presentation and 15 minutes for questions from the committee for the review of this bill. If we were to go with that similar format – and, of course, people would be so advised before they come – potentially, we could get through as many as six presentations in a three-hour meeting. That's something that I think as well is a point well taken.

Any other comments before we discuss the list of proposed presenters? We've had one member express some views on the list. Any other comments on this?

Ms Pastoor: Yeah. My comment would be that if we could do six, we could get most of them in. I would particularly like to hear from the Alberta Disabilities Forum. I have a couple of interesting situations on my desk right now. One of them is a fellow that cannot get on an X-ray table. He actually has to end up going to Calgary because there is no lift equipment in any of the X-ray facilities, but in Calgary there is actually the lift equipment that can then move him.

I think there are a number of concerns out there, so I would, you know, like to see them up first, I guess is what I'm saying.

Mr. Olson: I'm not sure if this practical, but in just looking at the list, I can see that there may be some usefulness in trying to group these submitters a little bit. You know, there are kind of some common elements to a number of them, it appears. For example, we're talking about eyes and optometrists and ophthalmology and stuff. Maybe those could be grouped together. I find it helpful for myself anyway, rather than jumping back and forth from one subject to another, to kind of deal with them in common.

The Chair: That's an excellent suggestion.

Dr. Swann: I would support that. Maybe I'm forgetting the process for priorizing our decisions about what this committee will be addressing and in what order. One of the things that comes to my mind as a matter of public concern is recruitment and retention of family physicians. I haven't formally pitched that to this committee, but it seems to me that if I really am reading the public sentiment, that is one of the most critical issues that we could be helping to address as a committee. So what is the process for getting on the list, and what basis for priorizing these issues have we got?

The Chair: Okay. The first order of priority is set out in the standing order, where any item referred to us by the Assembly takes priority. Now, that doesn't mean that we must address that issue to the exclusion of all other issues. I mean, when there's a deadline – in this case for this bill it's the last week of October – there's some pressure for us to complete this. What I'd be proposing, there are two routes. I can't quote the standing order number for you, but the committee may conduct inquiries of its own choosing. We've had some discussion around this before in the committee. The process for that would be a motion by a member of the committee and a discussion by the committee as to whether it wanted to conduct an inquiry into a particular subject. Other matters referred by the Assembly would still take priority.

For example, in the case of Ms Notley's motion at the next meeting of the committee my plan is to bring forward a discussion about the scheduling and the specific nature of the discussion that we want to have with the parties referred to in the motion that was

passed at the last meeting. As chair I'd propose to sort of handle it the same way so that we're constantly looking to the schedule ahead of us and collaboratively we're making the decision about in which order we'll deal with matters.

Again, your question specific to process. For groups and individuals that want to appear before the committee in a public meeting pursuant to the standing order that allows for that, the process would be for the organization or person to write a letter to the committee chair, with a copy to the clerk, directly making the request and, you know, hopefully giving some sense of what they'd like to talk to the committee about. In the future once we get this going and people realize that's the process, my intent would be to then table the letters with the committee, and then as an agenda item we would discuss the specific requests.

The idea about designating two times in a year is so that we've got a time slot to put these presenters in so that if a decision is made to accept a particular request, then we can offer a date and time subject to something else coming from the Assembly that, you know, means we may have to change the schedule.

I'm hoping I'm answering your question, but there is a bit of a juggling act here that we have to consider.

Dr. Swann: Thank you. You've answered part of it. The other part of it is whether it's first in time that determines who gets the priority for hearing or whether we decide as a group what is the most pressing issue for us to deal with and try and priorize on the basis of importance and urgency. I think the latter should be the case. Is there provision for us to have a small group of people that kind of make that decision around priorities?

The Chair: I stand to be corrected by the clerk, but there's nothing in the standing orders that dictates the priority other than the business from the Assembly. There's no provision to my knowledge for subcommittees of standing committees of the Legislature.

Mrs. Dacyshyn: They can.

The Chair: I guess we do have the option to do that. Whether or not we'd choose to do that, again, would be for discussion here with a motion.

My own feeling as chair is that at least to this point we've been able to involve everybody in those kind of discussions. Once this report is submitted, unless there's another bill coming from the Assembly, we're going to have lots of opportunity into November to discuss and set priority for other items.

Dr. Swann: It was my understanding that these particular presenters were not necessarily related to the issues that we're dealing with today.

The Chair: No.

Dr. Swann: They're totally unrelated.

The Chair: That's why I segregated them in a separate list.

Dr. Swann: I guess I'm asking for clarification and maybe discussion at some point about how we're going to make these priorities, how we're going to make the decision about who we hear first, if at all, as a result of other pressing issues.

The Chair: Well, then, I guess I'll just pose the question directly: do any members of the committee not wish to hear from any of the organizations that are listed, just as a starting point?

Mr. Dallas: Mr. Chair, all I would ask is that in the case of the proposed submission by the Glenrose foundation you apply some diligence with respect to the nature of their presentation and work with them to determine whether or not that is within the mandate of the committee. It strikes me that the changes in the brief summary that they're proposing are outside the scope of this particular committee and may well be within the mandate of another ministry altogether. That's all my concern is with these.

I guess to my colleague Dr. Swann. Perhaps there's an opportunity as we not really determine the priorities of the committee but as we work our way through a number of these organizations that want to present. Perhaps in that same realm there might be organizations that we would simply offer an opportunity to present so that the committee as a whole could determine whether there was interest in further pursuing concerns, priorities that are within there.

The organization that came to mind was the rural physician action plan. You know, had they known that we were soliciting opportunities to present, perhaps they would have had meaningful information that might be useful to the committee and that might lead to further action in terms of where the committee would go. I don't know how we accommodate all of that, but I think there is merit in identifying organizations that we might add to a list that ultimately we do have to pare down and priorize from.

1:00

The Chair: Dr. Swann.

Dr. Swann: Thank you again. Good discussion. I'd like to make a motion, therefore, that we establish a subcommittee to do the work of priorizing key health issues in the province and making appropriate recommendations to this committee that the committee can then react to. So do some homework before a full meeting, and part of that homework would be to try to put some criteria around urgency and importance of specific health groups and issues that we would then present to this full committee, and they would make decisions about our next year's work beyond what the Legislature has prescribed. My motion is to create a subcommittee to do that work in between meetings.

The Chair: Discussion on the motion.

Mr. Vandermeer: I think that we already have a subcommittee, and that would be our chair and our deputy chair and the clerk, and they should be able to co-ordinate that fine. They know what the issues of the day are, and there's a reason that they're a chair and a deputy chair and a clerk. I think that they can do a fine job in co-ordinating that.

The Chair: Just for clarification as opposed to speaking to the motion, the process as I saw it here would be that if there is no objection to any of the groups that are cited here and if we're agreeable that we'd allocate approximately 30 minutes per group, the clerk would poll us on one or two dates for a future meeting. These groups would get a letter inviting them to appear before the committee on that date along with some guidelines. In terms of vetting, I think we've done the job here because we seem to have consensus that all of the groups here could appear.

In terms of the subcommittee – and that's certainly something that can be done – the decision to specifically inquire into a particular area would have to be a motion from the committee. The subcommittee could not make that decision unilaterally. Regardless of whether you have a subcommittee or not, we're still going to end up having that discussion at this table. I'm not sure what you're hoping that process would add to what we've been doing so far.

Dr. Swann: Thank you. It would create a more proactive approach to health issues in the province as opposed to reactive. Based on individual awareness and raising of issues, the subcommittee would look at the picture of health in the province, look over the next decade, anticipate issues, identify key people or groups or themes that we should be addressing. It's a more proactive planning approach to what we're doing here as opposed to reactive. I guess it would be having the ability to do both. We are doing the one. We're reacting to a proposal from the committee members. The question would be whether we could also add a dimension of strategic thinking, planning, and initiating some suggestions around where we can best focus our efforts in the next four years.

Mr. Olson: This has been a really good discussion, and it reinforces for me my own responsibility to identify issues and potential submitters who we should hear from. I guess I have to say that I'm a little bit unenthusiastic about the idea of a subcommittee because I also feel as though this is a small enough group and we meet often enough that if we each take it as our own responsibility to seek out organizations that may be interested in talking to us, we achieve the same thing and perhaps even more efficiently.

The Chair: Mr. Dallas.

Mr. Dallas: Thank you, Mr. Chair. I also will speak against the motion, essentially on the same basis. There must be another structure that we can use, whether it's convening a workshop where the entire committee can have that same discussion that a subcommittee would engage in. Perhaps that's the pathway here because ultimately I think the priorities of the committee belong to the whole committee, and everyone will have some valuable input there. So perhaps there's some way to structure a separate exercise where we could review the potential of the groups and priorities that Dr. Swann alludes to.

The Chair: Ms Pastoor.

Ms Pastoor: Thank you. I'd like to just follow up on what my two colleagues have said ahead of time. If there is a specific issue – and I'm sure that you have some in mind – then you yourself could also make the presentation to the committee. If any of us had a concern or, as Mr. Olson has suggested, there could be a group that we would encourage to come to us, I think it could be handled that way.

The Chair: Dr. Swann, I don't know. We could vote on the motion, or if these comments are of benefit to you and you wanted to withdraw the motion at this time – how would you like to proceed?

Dr. Swann: I would be prepared to amend the motion and suggest that I fully agree with the suggestion that we set aside a specific time, then, to look at what the issues are and thoughtfully plan for the next three years about how we think the priorities of this committee should be addressing the issues.

The Chair: If I could, just from a process point of view, the amendment is actually different.

Dr. Swann: Withdraw the other motion.

The Chair: What I could say is, you know, your chair has planned for when we have our report submitted on Bill 24. My idea was that at the next opportunity, which would hopefully be in November, we would actually then be free to have that discussion in full committee because we've met our obligation to the bill and to the Assembly. If you want to formalize that, we can certainly do that here, but, I mean, we have a number of matters to schedule. We have the motion that was passed at the last meeting that deals with public health. We have these groups that are coming in. We need to have that discussion in any event to determine how we conduct our business when we don't have matters referred by the Assembly in front of us. If you wish to codify that, we can, but I can commit to you that that's what would happen in any event.

Dr. Swann: Thank you for this. Then my recommendation – and it doesn't need to be in the form of a motion necessarily – would be that we establish a routine of annually examining priorities and issues of this committee and make a strategic plan that we would fall back to each year when legislative business was completed or in conjunction with legislative business and that there be a written reminder to us of that particular item coming forward so we could prepare for it, do some homework, and present possible themes and groups for discussion. If we don't plan it, we won't necessarily do it because there are lots of things pressing in on us. This is what I'm saying.

The Chair: I see heads nodding. Again for the audience, heads nodding. Could I take it we have consensus on that, that we will make that discussion a priority for the first opportunity that we have once the report has been submitted?

Dr. Swann: Sure. Strategic planning, part of a meeting, whatever.

The Chair: Okay.

Dr. Swann: Thank you.

The Chair: Agreed? Oh, I guess for the record I should ask: is there unanimous consent for Dr. Swann to withdraw his original motion?

Hon. Members: Agreed.

The Chair: It's unanimous.

Dr. Swann: Thank you.

The Chair: Okay. I'll ask, then, for a motion that

> the chair proceed with an invitation to these groups, subject to acceptable scheduling of dates for committee members, to attend a future committee meeting to make a presentation and answer any questions from committee members.

Mr. Vandermeer?

Mr. Vandermeer: So moved.

The Chair: Discussion?

1:10

Mr. Quest: Just to clarify. Going back to Mr. Dallas's comments here about, I guess, a suitable screening process, just to ensure that the presentation they want to make is relevant to what our committee is responsible for.

The Chair: I noted that. I actually take a lot of very good advice. Like, my first point of screening would be: does it fall within the policy areas that are under the mandate of our committee? That kind of thing. If we could note in the minutes that that be carried out. If members have feedback, you know, subsequent to our first run-

through with some presentations, that would be helpful, too. We can certainly discuss the appropriateness of the presentations and whether we feel that they're able to add to our ability to discharge our mandate. Okay?

Thank you, Dr. Swann, for raising those matters, and Mr. Quest.

Okay. We'll vote on the motion, then. Those in favour, please? Opposed, if any? The motion is carried. Thank you very much.

Under Other Business, any other business?

Okay. Just to be clear, then, if I could, as I mentioned earlier in terms of process, I'd like to make the recommendation that we not meet on October 1 in order that we give the staff a little more time to prepare the first draft of our report to the Assembly, which we would consider at the next date that we prebooked, which was October 9. Would that be agreeable? The document would be circulated to you prior to the meeting. Again, the intention is that this is an opportunity to consult with constituents, colleagues, anyone else, other stakeholders, and then we would all be prepared on October 9 to come in and make some firm decisions around the recommendations in the report.

Sorry. The deputy chair was going to . . .

Ms Pastoor: No. That's fine. I lost track of the date there, but it's okay now. I'm back on track.

Mrs. Dacyshyn: It's Thursday, October 9, from noon to 4 p.m., working lunch provided.

The Chair: Okay. If there is no other business, I'll call for a motion to adjourn.

Dr. Swann: Did we make a decision on October 1, then, to cancel?

The Chair: Again, everyone seemed to be in agreement. It's agreed?

Hon. Members: Agreed.

The Chair: Any other business, then? If not, I'll ask for a motion to adjourn. Moved by Ms Notley. Those in favour? Okay. We're adjourned. Thank you very much, everyone. See you October 9.

[The committee adjourned at 1:13 p.m.]

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