Legislative Assembly of Alberta

The 27th Legislature
First Session

Standing Committee
on
Health

Thursday, October 9, 2008
12:20 p.m.

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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
Micheline S. Gravel	Clerk of *Journals*/Table Research
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*

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12:20 p.m. Thursday, October 9, 2008

[Mr. Horne in the chair]

The Chair: Good afternoon, colleagues. My apologies for the late start. For the record, this is a meeting of the Standing Committee on Health. Before we get to the agenda, I'd just like to give those at the table an opportunity to introduce themselves.

Dr. Sherman: Hi. Raj Sherman, Member for Edmonton-Meadowlark.

Mr. Olson: Hello. Verlyn Olson for Wetaskiwin-Camrose.

Mr. Dallas: Good afternoon. Cal Dallas, Red Deer-South.

Mr. Vandermeer: Tony Vandermeer, Edmonton-Beverly-Clareview.

Mr. Denis: Jonathan Denis, Calgary-Egmont.

Mr. Bowes: Rick Bowes with the Public Trustee.

Ms Bentz: Cindy Bentz, the Public Trustee.

Ms Doyle: Brenda Lee Doyle, provincial director of the office of the public guardian.

Mr. Reynolds: Rob Reynolds, Senior Parliamentary Counsel.

Ms Gravel: Micheline Gravel, Clerk of *Journals*/Table Research.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

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

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

Mr. Quest: Hello. Dave Quest, Strathcona.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

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

Ms Norton: Erin Norton, committee clerk.

Mrs. Dacyshyn: Corinne Dacyshyn, committee clerk.

The Chair: And I'm Fred Horne, MLA for Edmonton-Rutherford.

Thank you very much for being here this afternoon. I believe we are expecting our deputy chair. Also, just to remind you, Dr. Swann is on the phone. Hello, Dr. Swann.

Dr. Swann: Yeah. I'm here. Calgary-Mountain View.

The Chair: Ladies and gentlemen, you have the agenda before you. Could I ask for a motion, please, to approve the agenda? Mr. Olson. Any discussion, additions? Those in favour? Opposed, if any? Carried. Thank you.

The next item is review and approval of the minutes of our last meeting, September 24, 2008. Can I have a motion, please, to approve the minutes? Mr. Fawcett. Discussion, corrections, other changes? Those in favour? Opposed? That's carried. Thank you very much.

We now come to item 4, which is the focus of our meeting today as we continue our deliberations on Bill 24. As you know, at the last meeting we reviewed a focus issues document prepared by the Legislative Assembly Office research branch, and that highlighted the key questions that emanated from the presentations that we heard and our own discussions in previous meetings. Subsequent to that meeting another iteration of that document was prepared and precirculated to you. Stephanie LeBlanc is with us again at this meeting, and she's available to answer any questions that you might have with respect to the document. But, of course, our ultimate goal today is to attempt to finalize our recommendations on the bill.

I have invited staff from the Department of Seniors and Community Supports and the office of the Public Trustee, and I believe we have leg. counsel for . . .

Ms Doyle: Our legislative adviser is here from Seniors and Community Supports.

The Chair: Thank you. We have a legislative adviser here as well, so we should have all the resources that we need in order to have a very specific discussion about our recommendations.

The proposal would be that following today's discussion, we'd come to the next meeting, which has been scheduled for October 15, and we'd have a final draft in front of us of a report, an opportunity to make any final changes and then approve that report and position us to table it in the Assembly by the required fourth week in October.

I'd like to suggest, if I could, that you might want to have in front of you the review of issues document that Stephanie prepared. This is the first time for us as a committee going through this exercise, so I'm going to sort of invite individual members to suggest or perhaps move a particular recommendation. We'll get it on the table, and then we can have a specific discussion about it, vote on it, and then move on to the next. We'll just keep going until all members are satisfied that any and all recommendations they want to propose have had a thorough discussion.

If I could, then, if you have the documents in front of you, I'll just open it up. First of all, perhaps I should ask: any questions on the document that Ms LeBlanc prepared for us?

Dr. Swann: If you would just reiterate the name of the document.

The Chair: I believe it's the review of issues identified in the September 24 meeting. Sorry, Dr. Swann. I've got the wrong one. It's the report of the Standing Committee on Health on Bill 24. It says draft across the front.

Dr. Swann: Thank you.

Ms Notley: I know that we had these documents put forward for the discussion, but as I discussed with you briefly before the meeting, I'm just wondering if that other document that a constituent asked that we circulate could be circulated and just noted as something that members would have before them as we're having this discussion.

The Chair: Certainly. Would you like to speak to that now?

Ms Notley: Yeah. We have copies. I was contacted by a seniors'

advocate by e-mail, and she just asked that this – it's actually a public document that appeared in the newspaper, an article about a senior who passed away a couple of days ago who had had some long-standing concerns about her rights under the current act and her inability to have herself moved from her long-term care centre. It was just a small article that appeared in the paper, and I was asked to ensure that members had this history before them as we went about considering the proposed new elements of the legislation. So members can review it. As I said, it did appear in the *Edmonton Journal* I believe two days ago.

The Chair: Okay. Thank you very much for making that available to the committee.

Dr. Swann: I don't see the review of issues on the internal website reference link. Should I be looking somewhere else for it?

The Chair: We'll have someone e-mail it to you, Dr. Swann.

Dr. Swann: Thanks very much.

The Chair: It appears under number 4, I think.

Dr. Swann: Number 4 on the agenda?

The Chair: I'll let the clerk respond.

Dr. Swann: Oh, 4(a), the draft report, October 9? Is that the one?

Mrs. Dacyshyn: Yes.

Dr. Swann: Oh, that's fine. Thanks very much. Yeah, I've got that one.

The Chair: Okay.

Mr. Olson: Mr. Chair, it seems that we have a number of documents in our hands that we could be referring to. Some of us government members, in an attempt to kind of focus the issues and be a little bit more efficient in our deliberations, had also come up with a listing of issues and some suggestions for possible wording. I believe Madam Clerk has copies of that that she could also distribute. We have tried to capture a number of what we understood to be kind of the important outstanding issues that we were debating. Possibly that could be used as a tool for us to arrive at some decisions here today, too.

The Chair: If it's acceptable to the committee, then, we'll distribute this document as well. Mr. Olson, would it be your intention to try to go through these items?

Mr. Olson: With your permission and the agreement of the committee, absolutely. We can discuss them as we go.

The Chair: Dr. Swann, this document is now just being e-mailed to you.

Dr. Swann: Thanks very much.

The Chair: What I'll suggest, if I could, is that we take a look at the document Mr. Olson is having circulated, and then we'll go on to any other recommendations that members may wish to discuss as well.

Now, before we start the discussion, I just want to make a point that, again, as you'll recall, the referral of this bill was after first reading in the Assembly. A report as set out in the standing orders would normally reflect the observations and comments of the committee, recognizing, of course, that there are some specific technicalities that the committee has discussed and may want to make recommendations on. This document, you know, is not being suggested as a draft report. The Legislative Assembly Office staff will take it back, and they'll format it and, I would suspect, add some appropriate preamble and so on to explain the issues that are being addressed. Then at the next meeting we'll have a chance to look at a final document. I just wanted to make that point.

12:30

Mr. Olson: Assuming everybody has this in front of them, you can see that the first title is Assisted and Represented Adult. One of the issues, I think, that had been discussed was the concern about an overlap between these various different conditions that a person might find themselves in and the possibility that one might fit into two different categories, arguably, at the same time. We didn't want to have the confusion of people not really knowing or understanding is it this or is it that. We've tried to clarify that a little bit by saying that the supported decision-making authorization ends when you become an assisted or represented adult – to become an assisted or represented adult, there would need to be a court order, so that would terminate the supported decision-making authorization – or if your personal directive kicked in. If you remember, a personal directive is a way for planning ahead for your own future incapacity. You have to do it while you have capacity, but it doesn't kick in until some time later, when you become incapacitated. That's the essence of that wording.

Then in section 17(4) we're talking about the guardianship order ending if there's a guardianship order in place and – I would think that this would be a relatively unusual circumstance, where there's already a guardianship order – it's determined that the person should have a co decision-making order instead. We're just saying that the co decision-making order would also terminate the guardianship order. One of the concerns was that you could have both at the same time. I think that deals with that.

Then just for greater certainty, in section 79.1 it's suggested that we might want to say that the court will not make an order that would result in a person being both an assisted adult and a represented adult at the same time.

I don't know whether there would be any debate over the wisdom of trying to go in this direction to clarify this, but that's the essence of this first piece.

The Chair: Any comments, questions, discussion on this point?

Mr. Denis: Just dealing with this whole document, 17 years of age, or one year under the age of majority, is mentioned. If the age of majority were, say, changed to 21, there would be created some ambiguity. Would it mean 17 or 20 in that instance? My suggestion, then, is just to have it state: one year under the age of majority. That way, if the age of majority did change, it would not require any legislative change as well.

The Chair: Just to help keep it clear, could we come back to that point in just a moment?

I take it that this bold denotes sort of a theme?

Mr. Olson: Right. Mr. Denis is half a step ahead of me on this.

The Chair: Okay, Mr. Denis, we'll come right back.

Mr. Denis: Thank you.

The Chair: We're looking at this first section, assisted and represented adult. Now I'm going to ask for some guidance here if there isn't going to be any further discussion on it. I take it that your intention is to want some sort of a motion that the committee adopt this as part of its report.

Mr. Olson: Uh-huh.

Mr. Dallas: Mr. Chair, with your permission I would just suggest that we continue to work through these. If it ends up that there appears to be consensus on all the issues, we could do that with one motion. Otherwise, if we get to a stumbling block, then, you know, at the end of that discussion we could go back and just clear off the ones that we do have consensus on. Does that make sense, or do you think we need a motion on each piece of this?

The Chair: Well, I was just attempting to keep it simple, sort of break it down into chunks. I'm not opposed to handling it that way if members are content.

Mr. Reynolds, any advice one way or the other?

Mr. Reynolds: Oh, it's entirely up to the committee. It's a bit different. I mean, none of the committees I've been involved with have had such formulated proposals before them, but certainly in other committees it's been done by consensus. I know that in economy with respect to formulating the submissions for the final report and having just sat through public safety, they took what was known as a straw vote. But, of course, these proposals are a bit more advanced than those ones, I think. So it's really up to the chair, you know, how you want to proceed on that.

The Chair: Okay. Dr. Swann and Ms Notley, if you're okay, we'll just work through the document if that's acceptable.

Dr. Swann: Fine.

The Chair: Thank you.

Mr. Olson: So then moving on to section 26, there has been some discussion about the possibility of making an application for guardianship while a person was still 17 years old, before they became an adult, keeping in mind that this act relates to court orders pertaining to adults. But I think – I think – there was a general consensus that it was a good idea to have the ability to start the process before a person turned 18 so that it was in place when they were 18. I think that the only thing we're trying to do here is maybe create a little bit more flexibility but maintain clarity, so instead of saying "17 years of age," we're thinking "one year under the age of majority." In the handout it says "17 years of age (or one year under the age of majority)," but I take Mr. Denis's point that it might be clearer just to say "one year under the age of majority."

The Chair: Any discussion on this point? I believe this is something we all discussed and agreed on at the last meeting. It was already in the bill, but we needed some additional clarity.

If you're amenable, then, we'll just give this as guidance to LAO staff who are drafting the report. The intention would be to say "one year under the age of majority" unless counsel, the department has any concerns.

Ms Doyle: I think it's fine. The discussion that we had the last time was that the intent of Bill 24 was to allow for the public bodies to apply, but it seemed to be unclear, so we're supportive of making it clearer.

Ms Bentz: We're working with the Legislative Counsel in terms of that, in terms of wording. I don't know if we got the wording down in section 43.

But we're getting ahead of ourselves, so we'll speak to that maybe when we hit there.

The Chair: Okay. Well, it would appear that we have consensus on including that in the report.

Then the next one, Mr. Olson.

Mr. Olson: Section 33. The first little amendment we're suggesting is just a small thing, again, for clarification. The way it reads right now, 33(3)(b) says, "When making a guardianship order, the Court shall . . . require the guardian to submit an amended guardianship plan within the time specified in the order." We felt like the reference to approval was missing there, so "an amended guardianship plan for approval" is what we'd like to add. Just add the word "approval" there.

I'll just move on to the next one. I have to say that I had some concern about creating a situation where people had to be running back and forth to court more than what was maybe necessary.

12:40

In sub (4) of that section right now in the draft it says, "A guardian may, with the approval of the Court, amend a guardianship plan." Again, if you wanted to do some change to the guardianship plan, you'd have to go back to court and get the court's approval. We're suggesting that we delete the reference to the approval of the court so that it just says that a guardian may amend a guardianship plan. I think there is still plenty of accountability built into the act, and we're trying to minimize what might be unnecessary court applications.

Then (6) and (7) of that section. What we're suggesting there is that they be deleted and a new (6), which is on the top of the back of your handout there – again, it goes to this question of overlap. So if a co decision-making order is in effect and then there's an application for a guardianship order, that guardianship order should terminate the co decision-making order, just to make it clear that they can't both be in effect at the same time.

As a bit of an afterthought, it's not referred to on your handout here, but it occurred to me that if we're deleting subsections (6) and (7) and we're adding a new (6), we don't have a (7) anymore, so I would think we would have to renumber (8) and (9), which follow.

Shall I just carry on as long as nobody stops me?

The Chair: I'll just ask.

Ms Notley.

Ms Notley: Yeah. I was just wondering with respect to section 33(4), where you're talking about striking out "with the approval of the Court," can you walk me through the other mechanisms through which that guardianship plan would be reviewed or assessed or receive any oversight?

Mr. Olson: Yeah. Just bear with me. Section 40 deals with review of the guardianship order. It says that there is a broad range of people, the represented persons themselves or a guardian or any interested party, that may apply to the court for a review. That

would be the time at which there would be oversight. I mean, that provision for review has always been in the act. Typically, I think you'd still need a new doctor's report.

Maybe I could ask Ms Doyle.

Ms Doyle: Would you like me to provide some insight? For the review it's like a fresh application. So if they're reviewing the order, you're back to providing some of the original documents, such as the capacity assessment, because you're looking to see if the person's needs have changed or their capacity.

Ms Notley: So am I correct, then, that what's happening is that if what you want to do is a more minor thing – the capacity remains the same – most of the circumstances, the finances remain the same? But let's say you want to change the guardianship plan, for instance, in terms of locale of residence. What you're proposing is that that wouldn't go before the court. If the person who's covered under the guardianship order was unhappy with that, they would have to go through a section 40 application, initiate it themselves or with some assistance from we're not sure where and then also initiate it in terms of a much larger application that requires sort of a reconsideration of a much broader set of issues. Is that right, like section 40 being a more substantive application?

Ms Doyle: Section 40 is the full review, so it is the full review of the guardianship order. If there was a concern, you know, that the guardianship plan had said that the person was going to remain at home and then a decision was later on for them to go into a nursing home, if that's the issue that you're identifying, what they would look at could be dialogue. Also, if the person felt that the person wasn't making decisions in their best interests, they could create a complaint. The complaint process could kick in at that point to look at it. But if they wanted to cause a full review under section 40, it is a fresh look, so it is the application.

Dr. Swann: I'm having trouble hearing in Calgary.

Ms Doyle: Sorry. Would you like me to repeat it, Dr. Swann?

Dr. Swann: At least the last two sentences, which were kind of crucial.

Ms Doyle: If it is a full review of the order, then you're going back with the documents.

Ms Notley: I appreciate what you're trying to do in terms of clarifying things and stuff, but the concern I have here is that what we're doing is shifting the onus to the dependent adult to initiate a process of complaint if they're unhappy with the change in the guardianship plan, so the onus goes from the guardian. I will grant you that we heard from a lot of guardians who feel that they've got onerous responsibilities, and I'm more than prepared to consider other ways to deal with those, but at the end of the day when it comes to actually representing your interests, I suspect that the guardians are better capable than many people who are the subject of the guardians. So shifting the onus is a bit of a concern.

Then later on we'll talk about as well my concerns with respect to the complaint process as it currently exists. I'm afraid that we might actually find ourselves in a position where we're telling the dependent adult that they have to get legal counsel and go into court. I'm a little concerned about that deletion.

I'd be happy to consider a recommendation that had some other neutral body approving it, like if there was some way to suggest that an officer or a review officer with the Public Trustee's office or whatever would review it. That would be fine to get out of the court issue. I think that might be a way to go. But I do think that it shouldn't be left to the dependent adult to have to defend themselves if they're unhappy with it.

Mr. Olson: I think what we're looking for is some balance here between these interests. Again, I want to stress that I think it was me who raised this, so I don't want to presume to be speaking for all of my colleagues on this point – I'm sure they can speak for themselves – but my concern is that up until now we haven't had the requirement to file a guardianship plan, so this is new, the idea of filing the plan.

My concern is that depending upon how much detail goes into the plan, if you're going to make any changes – you know, I think one of the goals was to make this as user friendly as possible for people while still protecting people. My perspective, I guess, is that it's not going to be user friendly if every time there's some sort of a change, you have to be running back and making more court applications. I don't see that being in the best interest of the dependent adult necessarily either. I guess, again, my perspective was that there are enough other ways of the dependent adult being protected without having to be churning through these applications. Those processes could be used.

But I should let others speak.

The Chair: Mr. Dallas.

Mr. Dallas: Thanks, Mr. Chairman. This is full circle to the discussion that we had at the least meeting. I again want to reiterate that the court is making a substantive decision in the appointment of the guardian, and the extra requirements that are required with respect to filing the plan, I think, are part of that due diligence process.

I believe that, you know, from time to time it may be that modest changes in those plans are required. It's not efficient use of the courts to make that decision, but there are in the act plenty of other provisions in terms of whether it's another family member, a care provider, or just someone who's a neighbour to initiate or express concern with respect to decisions that are being made. There is more than adequate opportunity for the courts to intervene at that point. So I would support my colleague's suggestion that we can simplify this and not be going back and forth to the court with, you know, proposals for very modest changes to a plan.

12:50

The Chair: Ms Notley.

Ms Notley: Yeah. I think that, you know, if one person happens to win the lottery and have an incredibly caring neighbour who's going to step up for them and put out the money and hire a lawyer and walk into court, then, yes, there's a mechanism for a represented adult to raise a concern if they have a problem with the plan or the amendment of the plan.

What I'm saying is that I agree with some of what you're saying. I understand that things change in the course of a guardianship process and that having each element of the plan back before a judge each time is probably not the best way to go. I hear what you're saying there, but I do think there needs to be some other way for it to be reviewed internally so that if there's a concern on the part of the dependent adult or by the dependent adult, there's somebody there who can assess that objectively.

I think that if what you do is that you create a section that says

that a guardian may amend the plan, then really for all effect and purpose you might as well just eliminate all reference to the plan from the act because, I mean, really it's just extraneous. Why have it there? If you set out this obligation for the court to review it and then you say that the guardian may from time to time amend it with no restriction or oversight, no parameters for that amendment, then you've effectively rendered the whole plan component of the legislative piece irrelevant.

What I'm suggesting is simply that we consider some less formal process, perhaps an internal process of review or consideration by a review officer. We have the review officers who are also identified in the act. I don't think it's helpful to anybody to have people running in and out of court. I think that will create a problem. You've convinced me on that. But I do think there needs to be some other protective mechanism in place.

The Chair: Could I make a suggestion, then, that we will proceed through this. It sounds like you may like to come back and talk about the complaints process overall. Could we address it as part of that discussion? I'm not sure. Are there other speakers on this particular point?

Dr. Swann: I would like to return to this as well, as I received some extra statements this week from an individual who felt that this was one area that she would like to see greater attention to. I'd like to return to the issue as well.

Mr. Olson: Well, I think that people have had a chance to voice their opinions on this, so unless we're going to vote on it or something right now, we could just as well carry on.

The Chair: The chair has made a note of it. I'll come back to it if that's acceptable. We've elected to deal with the whole document rather than deal with it in pieces. Anything else under this portion?

Mr. Olson: No, not under guardianship plans.

The Chair: Okay. Thank you.

Mr. Olson: Moving on to definitions: pretty straightforward again, I think. Just a reference to the adult: that definition including a person under the age of majority for just some limited purposes relating to the 17-year-old applications.

Then I think we had discussed how we would deal with the definition of a personal representative. We just thought it easier for people to read it in this definitions section rather than have to go dig through the Surrogate Rules or wherever they might find it to see what the definition is. I'm not expecting that there'd be anything contentious in these suggestions.

Mr. Bowes: I'd just like to make one comment regarding the definition of an adult. Recently some concerns have arisen about using the definition as an approach to achieving this, so Leg. Counsel is working on a different technique for achieving the same purpose in which you wouldn't be defining adult as including a child. You would be saying that under certain circumstances you could make an application for the appointment of a trustee for a 17-year-old or a person under the age of majority. So you wouldn't be sort of using that definitional approach, but it would be the same effect, and the order would only come into effect when they do reach the age of majority. The actual wording may change a bit to avoid that.

Mr. Olson: I think that would be fine as long as we achieve the desired result.

The Chair: Okay. Thank you.

The next section.

Mr. Olson: Okay. Specific decisions and emergency health care. This is one that there may be some discussion on. If you recall, we've struggled a little bit with how to handle this whole situation of a specific decision needing to be made and there maybe not being time to go get court orders and so on. There's been quite a bit of discussion about who would make that kind of a decision. In the draft legislation it provides that the doctor may designate somebody to make the specific decision. I think that there are at least some in the medical profession that have had some nervousness about that. This is found in section 88.

What this wording does in the handout is basically provide another option. If the health care provider can't be satisfied that there is an appropriate person to designate, then he may select the public guardian or somebody authorized by the public guardian.

Excuse me. I just want to read this over again to refresh my own memory here. Yeah. Well, I think that pretty much covers the gist of this little piece, but, as I say, there may be people who want to debate this one.

Another thing just as a little consequential thing. Not being a legislative drafter, I'm not real confident in how you properly number paragraphs, but it just strikes me that with these changes or any other changes that we're making to this draft legislation, we've kind of started putting in paragraphs, slipping paragraphs in and making them 1.1 and so on. But if it's brand new legislation and we're not amending anything, would we not kind of just strip it down and renumber everything? This is the right way to do it, eh? Because when we did this, I wasn't so sure.

Mr. Reynolds: You've done a remarkable job. You've done very well here. Yes. But the way that it goes, really, is that you put 1.1 in even though it's a new act, but when it is done at the end of session, Parliamentary Counsel works with Legislative Counsel under the authority of the Legislature, and tradition is to renumber the bill, basically. We sign off on it. So when it appears in the Statutes of Alberta, what is 1.1 will become 2. But the point is not to worry about this during the process so you're not renumbering things. Like, if you delete subsection (3), it doesn't mean that you have to renumber (4), (5), (6), (7). Don't worry about it. It'll be taken care of. Trust us.

1:00

The Chair: Okay. Thank you.

Any other discussion on this point?

Mr. Dallas: I'm sure this will be double-checked as well, Mr. Chair. I missed this before. Under that same section (a), "the nearest relative of the adult": I'm not sure that the word "nearest" is likely the correct term. I guess in layman's language what we're trying to describe is the closest, meaning near or close but not necessarily to express something that could be interpreted as geographic. What they're really talking about is lineage, and I don't know that this would be the correct descriptor for that.

The Chair: Okay.

Mr. Olson on this point.

Mr. Olson: Yeah. "Nearest relative" is defined in the act, and that

definition hasn't changed, has it? It's the same definition that has been in the act. It basically is a next of kin type of a thing. That's on page 8.

Mr. Dallas: That's clear there, Mr. Chair. Thank you.

The Chair: Any other discussion on this point? I know we discussed this issue at length at the last meeting, but I just want to make sure.

Mr. Reynolds: Mr. Chair, I apologize – I am new to this committee – but in proposed subsection (1.1), where it says, "if there is a dispute about who is to be selected under subsection (1)," I was just wondering: is that clear, that there is a dispute between the adult or relative who is to be selected and the adult who is the subject of the order? Certainly I think that's clear in what is 88.1(f), yes, but I'm not sure in 1.1. Is that supposed to be the same dispute, or is this just a dispute with anyone in general?

The Chair: Can you help us with this, Ms Doyle?

Ms Doyle: Just based on the research we looked at after the last session, when we had quite a bit of discussion about some of the discomfort if there are nearest relatives who are equally ranked who seem to be disputing each other around who's the best, we looked at the other pieces of legislation, and Ontario has something. So it's a dispute between the people who could be selected as opposed to the adult. Ontario then jumps in and allows the Public Guardian and Trustee, and in B.C. they do something similar to this.

The Chair: That provides some clarity?

Mr. Reynolds: It wasn't for me. I just wanted it in case the committee had any questions or was uncertain about that before it was made a recommendation. As I understand it, it's meant to be a broader dispute, then, not just the dispute in 88(1)(f). Sorry.

The Chair: No. I'm glad you're raising the point. My recollection of the discussion at the last meeting was that, yes, it was a broader definition, the intention being not to put the attending physician or health professional in the situation where they had to actually mediate a dispute. They had an option not to do that through a referral to the public guardian. My recollection was that we meant the broad definition.

Other members want to disagree? Ms Notley.

Ms Notley: No. Not on that issue, no. I'm not even necessarily disagreeing. I just have a question, and I'm just throwing this out there to people on this committee who are doctors who have opinions on this. Frankly, I'm interested simply in your opinion. Do you think it risks being a situation where the precondition to going to the public guardian becomes too onerous? The question being if there is a dispute, assuming we define dispute in the way you're talking about it, the doctor may then, you know, avail him- or herself of the assistance of the public guardian. Does that address the problem? Or could there be other situations in which the doctor might just say, "This is too big; this is too complex; I have three seconds and 20 more patients; I just want it to go to the public guardian"? I'm just wondering if there's any value to its just saying that the doctor may contact the public guardian. I don't know. I mean, it's not my experience that drives this discussion. I'm just wondering whether that gives more flexibility. That's all.

The Chair: I think we have the word "may" in here, don't we?

Ms Notley: It does. But the precondition is that if there is a dispute about who is to be selected, then the doctor can, you know, do whatever with the public guardian as opposed to just: the doctor may appoint the decision-maker, or the doctor may select the public guardian. You know what I mean?

The Chair: I understand.

Any comment on this, or is there some clarification? Is this addressed elsewhere in the bill?

Mr. Olson: Well, in section 88(2) it says that if there's no person available who meets the criteria in subsection (1), the health care provider may select the public guardian.

Ms Notley: Right. This is not just a situation where there's a dispute or there's no person available. I could contemplate other situations where the doctor is just not wanting to be selecting the decision-maker.

Mr. Olson: Well, you know, I had that concern, too, but in 86(2) it says, "Subject to section 87, a health care provider may, in accordance with this Division, select a specific decision maker." I read that as being permissive. I don't know that you can put a gun to a doctor's head and say: you have to make the selection. I think it's a tool that he has. But there may be doctors who say: my practice is that I will never do this, period. Then there's obviously going to be nobody there. You know, if it's an emergency, there are other provisions for him to give emergency care without the consent anyway.

Ms Doyle: Just to clarify, that's correct. Some doctors may want to just wait for a guardianship order, and they have that option of saying: no, I'm not using this provision at all; I want someone who is court appointed.

I think the specific decision-making is the situation where there is family there. You know, our ministry would be reluctant to step over family. There is the doctor to go to the family first, but if there is a dispute or where there's no one else, then they can come to the public body. But we wouldn't want to jump ahead of family.

Ms Notley: Okay.

The Chair: Thank you.

Dr. Sherman: Well, as the one member on the committee who deals with this on a daily basis, usually there are two physicians who make the decision in an urgent or emergent situation, and 9 times of 10, usually, we select a family member if the patient cannot make that decision. But disputes do happen frequently, and in that case the last thing a physician wants to do is to be caught in the middle of a family dispute and be picking sides. Our job is to look after patients, not settle disputes on who is going to make decisions.

I thank Mr. Olson for giving the physician the option of consulting the public guardian. I think they should be the ones making that decision so that we can do what we do best, which is look after patients, and let the decision-makers make the decisions that need to be made.

The Chair: Okay. Anything further on this point?

Thank you very much, by the way, Mr. Olson.

Unless there's some advice to the contrary, I think what I'll do is

ask whether we have consensus of the committee for these recommendations to be included in the final draft of the report, and then we can go on to discuss other recommendations that other members may want to put on the table as well. Can I just ask for a show of hands, then, for those who will be comfortable with including these in the final report?

1:10

Mr. Vandermeer: Are we going back to this section 33(b)?

The Chair: We can go back to it within here, or we can deal with it separately.

Ms Notley: I mean, certainly, personally, I'm not sure what your feelings are, but I'd be quite happy to say that there's consensus on everything except that one recommendation. So we could say we're good with everything else, pull out that one piece, and have a further discussion of it.

The Chair: Yeah. That's where I was headed.

Mr. Vandermeer: Okay. I will agree with that.

The Chair: We'll note for the record, then, that we have consensus with the exception of the item under Guardianship Plans, the amendment proposed for section 33, the (b) amendment that's proposed.

I think we've noted as well that we've agreed that rather than the phrase "who is 17 years of age," we would use the words "who is one year under the age of majority." Have I got that correct?

Mr. Dallas: I think there was also the suggestion that legal counsel would provide some further advice as to how best to wordsmith that as well, Mr. Chair.

The Chair: I should say – and forgive me for not saying at the outset – that the style for a report to the Assembly after a first reading referral is somewhat different from a second reading referral. The report from first reading is specific recommendations, but it's generally in more of a narrative style. As necessary it certainly references specific sections of the bill and specific changes that have been proposed, but just from discussion with Mr. Reynolds before, I just wanted to make that point.

If we were referring a bill after second reading, what we would expect to see as members is a very specific draft of proposed amendments. Then depending on the will of the Assembly, if the Assembly chooses to disagree in Committee of the Whole, Committee of the Whole would actually have to propose subamendments to the amendments that were proposed by the committee. Some of you may recall living through that experience last year. So I wanted to sort of follow up on Mr. Dallas's point that there will be some thought given to wording consistency with other legislation, and we'll get an opportunity to look at the whole thing, of course, at our next meeting. But that's a very good point, and I should have mentioned that at the outset.

Ms LeBlanc: I just wanted to confirm for the purposes of the report: is every instance where "17 years of age" is used in the bill to be changed to "one year under majority" or whatever Legislative Counsel approves?

Mr. Olson: Well, I think that if we're going to make sense of it, it should be consistent throughout.

The Chair: I believe that's our intention.

Ms LeBlanc: I just wanted to confirm that.

The Chair: My suggestion would be to also consult with the legal adviser from the department as you do the draft.

Ms LeBlanc: Thank you.

The Chair: Thank you very much for that.

Now, we can go back to the issue around section 33. I'll invite further discussion on that point, the proposed amendment (b) at the bottom of page 1.

Mr. Vandermeer.

Mr. Vandermeer: Yeah. I've been reading this over and over and over again, and it would seem strange to me that you would get a guardian to make a plan only to walk out of the room and change the plan without any approval. I understand that we don't want to be going back to court every time, but there seems to be something. I was thinking that possibly the review officer would okay it or not okay the change in the guardianship plan. If the review officer felt that it would have to go back to court, then it would go back to court, if that makes any sense.

Ms Notley: I'm just wondering if we could hear from officials who are here from the department to hear if they think there is an internal process or position or, you know, entity which could play the kind of role that we're talking about from a conceptual basis.

Ms Doyle: I think you've identified the right party as the review officer because the review officer will be the person who would have seen the plan first. In Ontario they do have reviews of the amendments kind of go back to a body such as that if they're substantial. The guardianship plan is supposed to be at a pretty high level, not identifying specific decisions but basically the approach the guardian is going to take to decision-making. You wouldn't want just any small changes to have to go to a review officer. But when you're identifying who's the natural, if it was in court, it would probably be the review officer that could look at that issue.

Mr. Dallas: Just a question of a potential compromise to this. As I spoke of earlier, I think the court needs to be the ultimate decision-maker with respect to these matters. To move those decisions to a quasi-judicial body or an individual without accountability to other than the court I think is perhaps not the best route to follow. Suppose that we were to propose that a review officer would simply review proposed changes to the guardianship plan on the basis of approving or not approving, with the idea that nonapproval would mean that the issue would have to be forwarded to the courts for review. This would likely flesh out the changes that were significant in nature and ones that required the wisdom of the court. The less complex ones: again, we would serve the purpose of keeping those out of the court system, you know, the client requiring the expenditure of funds to do very modest work.

The Chair: Other discussion on this point?

Mr. Bowes: If the approval is by the court, one way that we can partly address that concern about the time and cost and so on is through the process, and that's dealt with in regulations. You'll be familiar with it: the desktop process for applications. We have been thinking in terms of dealing with the specific matter of approval of

amendments to plans by having a very expeditious desktop proceeding where you wouldn't be having to serve that huge range of people who you have to serve on the initial application but just perhaps notice to a review officer and the adult. Then if neither of them objects, the court would be able to do it through this expeditious desktop process, which would go a long way to addressing the costs issue. That would be one option that you might want to think about.

Mr. Olson: I have a question. On the trusteeship side of it – I'm looking for it here but am not finding it – you have to file a trusteeship plan, but is there a requirement to make an application for approval of an amended plan?

Mr. Bowes: That's right, that it would be approved by the court. As compared to guardianship plans, we wanted to make sure that changes of guardianship plans would be with the approval of the court because it could be such a major shift from what was originally proposed to what they're doing now. In the trusteeship context we were definitely wanting to have approval of any amendment but also through an expeditious process that would cut down on the potential cost. If the plan is drafted appropriately to begin with, you're not going to be having to go back, you know, every week or month, because it will give you some flexibility in the plan.

1:20

Mr. Olson: It would just make sense to me that there be some continuity between the two. I mean, if it makes sense to deal with one of the plans this way, then it probably makes sense to deal with the other in a similar fashion.

The thing that scares me that I think you've put your finger on is: what exactly is a change that would necessitate the requirement to file an amended plan? I don't know if there can be some, you know, clarity around that point. The part I fear is people scratching their heads and wondering: "Well, I had five thousand bucks in a GIC in the credit union and I've moved it over to the TD Bank, so do I have to file an amended plan now? I've still got five thousand bucks, and it's still in a GIC." That's the kind of thing that I think we want to avoid as much as possible. The magic is in doing the plan right in the first place. I guess that as a lawyer I would be encouraging people to just make it as broad as absolutely possible, like "the person will live somewhere in Camrose," so that I don't have to be amending a plan if they move from this long-term care to that long-term care or something like that.

Mr. Bowes: Yes. I've been to Camrose, and I can see that anyone would be overjoyed to live anywhere in Camrose.

I think that you're exactly right in terms of making sure that the plan is drafted appropriately and gives sufficient flexibility. It's a lot like now where you have the order and oftentimes questions will arise as to whether something that's proposed is within the terms of the order. Of course, under the AGTA you'll have plenary power, so you'll actually have more potential power. So the plan is sort of defining what you're going to do.

I think it's not really going to be fundamentally different from now where you've got the order and you have to make sure that you're complying with the order. Under the AGTA it would be that the order sort of incorporates the plan by reference, so it may involve some interpretation, but I think that's not fundamentally different from now.

The Chair: Okay. I'm just going to ask where we are now in terms of this discussion. Are we proposing a separate recommendation here with respect to this issue? What's the will of the committee?

Mr. Vandermeer: I'd like to move that we amend section 33(4) by striking out "with the approval of the Court" and making it "with the approval of the review officer."

The Chair: Any further discussion? I was planning to just deal with it by consensus. We can certainly deal with it as a formal motion if you wish.

Dr. Swann: Could you repeat the motion, please?

The Chair: Would you mind, Mr. Vandermeer?

Mr. Vandermeer: That we amend section 33(4) by striking out "with the approval of the Court" and rewrite it to say "with the approval of the review officer."

The Chair: Mr. Dallas.

Mr. Dallas: Thanks, Mr. Chairman. I now find myself wanting clarification as to what constitutes a review officer. There was a term that was used there in terms of how these could proceed through, you know, a clearing house with a fixed set of criteria that I think would be defined in regulations. The ones that were inside the criteria would be approved, and the ones that were outside that criteria the court would be compelled to rule on. If that's what we're talking about, then I want to support this. If we're talking about establishing an office and populating it with persons that are charged to support complaints and concerns and those types of activities, I'm not supporting this. So I need to understand what we're talking about here.

The Chair: Okay. Can the department provide us any clarity?

Mr. Bowes: On the point of who are review officers, the bill in section 80 does provide for review officers who are persons designated by the minister. It's contemplated that they would be people in the public guardian's office. Just in terms of what you're talking about – and here I'm just sort of thinking off the top of my head – I suppose that it might be possible to say with the approval of the . . .

Dr. Swann: I'm having a great deal of difficulty hearing. Somebody is on the phone up there, or there's an operator intervening.

The Chair: Okay. We'll have someone look at it right away, Dr. Swann.

Dr. Swann: Thanks.

Mr. Bowes: What I was thinking is that the act might say: approved by the court or if permitted by the regulations by the review officer. I'm a little bit concerned, as you had the same concern, about just allowing a review officer to approve a change, essentially, of an order that's been granted by the court or has been approved by the court. It does raise some concerns about just allowing the review officer to willy-nilly approve a change in something approved by the court. Maybe the regulations could define circumstances in which a review officer could approve a change; otherwise, it would need to be approved by the court.

The Chair: Any other comments on this point?

Ms Doyle: As the public guardian who is going to be acting as the

review officer, I think it would make sense to basically have a process that could be further defined in regulations about if there are amendments such as a significant change in a person's life, if it needs to go forward to the court.

The Chair: Mr. Vandermeer, if I could make a suggestion. It's entirely your call, of course, but we sort of have consensus on the point that there is a role for a review officer. The parameters need to be defined and so on. Could we perhaps ask this to be addressed in the final draft of the report? Then we'd all be looking at something probably more descriptive than what we have in the motion on the table, and it just might be a little easier for members to have a discussion.

Mr. Vandermeer: Sure. That would be fine.

The Chair: So would you be willing to withdraw, then?

Mr. Vandermeer: Yeah. I'll withdraw my motion.

The Chair: Okay. I guess we would need unanimous consent for that.

Mr. Reynolds: You could do it. Certainly, in the House when that occurs, you require unanimous consent, but my understanding was that in the committees it's a little less formal when someone chooses to withdraw a motion.

The Chair: Well, that's the advice.

Mr. Reynolds: Oh. You wanted to have unanimous consent?

Mr. Vandermeer: Sure.

The Chair: I'd like to run the meeting by what's required.

Mr. Reynolds: Well, yes. Other meetings really haven't, but that's fine. Go ahead.

The Chair: All right. I'm going to take it on advice that we don't need that.

Is there any more discussion on this point? Ms Notley.

Ms Notley: Yeah. I was just going to try and maybe sum up our discussion a bit. Now we've eliminated the motion, but I'll say it anyway. Because we're dealing with the act in front of us and not the proposed change that came from the Member for Wetaskiwin-Camrose, it would be safe to say, then, that when it comes to section 33, the committee is interested in ensuring that there is a streamlined process that would probably rely on the assistance of a review officer in standardizing the approval process that we were looking at. I'm not sure. I mean, I leave it to them whether everything goes in front of a judge through a desk process or only some of the things do. It doesn't matter. We're still agreeing that there'll be some type of oversight, but we're looking at streamlining to ensure that we're not having to do whole separate applications.

Now that I've kept talking, it's no longer a brief summary. Sorry.

The Chair: Thank you very much for that. I think, then, we've dealt with this document in its entirety.

Are there any additional areas where members would like to discuss recommendations?

1:30

Ms Notley: Well, as I mentioned, I did want to talk about the issue of the complaint process. I see that there was the supplemental information provided. In that supplemental information as it relates to the complaint process, it simply talks about it being something that can be discussed in the regulations potentially and then talks about there being a more substantive process contemplated when the complaint is with respect to the public guardian or the Public Trustee. But, of course, that doesn't really answer the question where the guardian is not the public guardian or the Public Trustee, where it's, in fact, a different guardian, which is, I'm assuming, what we're anticipating will be the case in the majority of circumstances.

I mean, I've talked about this at some length already. I remain concerned that as things stand now, a complaints officer at the initial level under the act has the ability to not accept the complaint, and there's no real way to deal with that decision except by marching into court in a very laborious and not streamlined process. I believe it turns into a judicial review application in Queen's Bench, and it's not, you know, a simple process.

There's talk in here about an ombudsman or an advocate position. I'm not necessarily even going that far. I don't want to mix those two issues. I know that there was talk about an advocate position. What I'm really doing is just focusing on the fact that the way it's structured right now, there's no internal mechanism for reviewing a decision of a complaints person to just shut down the initial request, and there's no internal administrative objective review process.

I understand the need to balance the concerns between the dependent adults and the guardians, and that's why I'm not suggesting that we create this huge laborious process. There needs to be, I think, an administrative tribunal-type mechanism that is objective and transparent and follows the rules of natural justice, does not involve the courts except as a final mechanism, so wouldn't in the vast majority of cases, but does provide for some redress where the dependent adult believes they have a concern and where the first person who receives notice of that concern simply chooses to not accept the complaint.

I think that that's a fundamental flaw in the structure that's contemplated right now, and it is a significantly different approach to the problem than what you see under the Mental Health Act. You then also get into the strange situation where depending on how people are characterized, whether they've got dementia to the point that somebody has decided they have a mental illness or whether it's a physical issue, I mean, they have two different recourses in front of them when they're unhappy with the decisions being made by their guardian. That, too, I think is not particularly advisable or really good governance, frankly.

In section 76 what I would like to see is simply a mechanism, another clause basically, saying that a decision under that section can be referred – to be honest, I haven't gone through this in huge detail – potentially to an investigations officer or review officer for reconsideration. That review officer would sort of adjudicate it, and then whatever opportunities flow from a decision of the review officer might be there. There needs to be some oversight over the gate because this is a gatekeeping function. If you can't walk through the door, if someone says, "Sorry, you're not allowed in, and that's it," it just doesn't seem to me to be – particularly, when we're dealing with such important issues in people's lives, really important issues in their lives like the things that make or break sort of the quality of life at that point in their life.

That's my concern, and I'd like to see some recommendation around improving that part of the act.

The Chair: Mr. Dallas, did you have your hand up?

Mr. Dallas: Well, thanks, Mr. Chairman. I wonder if the hon. member would be open to the idea that this just could be referred to another complaints officer, whether it was in another office or somehow independent of that. It just seems that creating a tiered level of decision-making authority here when ultimately we're kidding ourselves and the court is the final arbitrator of these matters, is inefficient use of resources. I mean, if it's as simple as saying, "Well, you know, a complaint officer said no," and the potential complainant had the opportunity to make their case to someone else that was independent of that initial decision-maker, maybe it's not a big problem. But creating a whole other sort of office of decision-making authority when, really, the function is gatekeeping frivolous and, I think as the act says, vexatious matters from consideration – I don't know that this is such an onerous task.

The Chair: Ms Doyle, did you want to clarify something?

Ms Doyle: I wonder if I could just clarify the intent of what the practice would be. The complaint officer wouldn't be making that decision solely. The supervisor, who would be the head of the public body, would have to make the decision ultimately of whether or not a complaint is screened out. I don't know if that addresses your concern, Ms Notley.

Ms Notley: I'm sorry. I mean, I appreciate the advice, but unfortunately that's not what the act says, so that's why I'm concerned about that. I like that you're trying to think of a clean way to fix it. My concern about it being just another complaints officer is that you kind of run into this problem with, you know: justice must not only be done, but it must be seen to be done. If my officemate is making a decision and there's no opportunity to have that sort of transparently reviewed, I don't know that it necessarily fixes the problem.

The thing of it is that you're right. The act says: when the complaints officer "considers" it to be vexatious and frivolous. Well, you know, get me on any one of five different days, and my version of vexatious and frivolous will change depending on my mood. The act is actually written for it to be the subjective opinion of the complaints officer, so again that's why I'm concerned.

I'm trying to flip through here to find who are all the officers because what I'd like to see is some type of removed person but still internal to have the opportunity to look at that and then to provide written reasons if they uphold that decision. At that point often just the process of putting it in writing will compel an organization to reconsider how they've approached it. That's my experience in my role of advocacy. If they're firmly committed that, "No, this is vexatious and frivolous, and not only Rachel thinks it's vexatious and frivolous when she's had a really bad day getting the kids off to school in the morning, but I do, too, now that I've had to put pen to paper" and give it in writing to this person who's filing the complaint, knowing that that person may at that point decide to go get some assistance, I think that provides some better safeguard.

I don't have the right person internally to say who it should go to. I'm not sure. I'm trying to figure out who the review officer is and how many of them there are and what they do. I don't know.

1:40

Mr. Bowes: The review officer's role is more directed to the initial court application. They're involved in court applications, so you've already got some sort of court application afoot. That was their sort of principal envisioned role as opposed to handling complaints, like the complaints officer. I think the review officers and the complaints officers are the only officers that are specifically referred to, and then there are the investigators who investigate the complaints once they've gone through the complaints officers.

Mr. Olson: Well, I was looking to find some middle ground here, so I'm just going to throw this out. I don't know how practical it is, but I'll just give it a try. If there was a positive duty on the complaints officer to provide a full written report to their supervisor of any complaint that they rejected, that they refused to investigate, there is another set of eyes and there's a duty on the complaints officer to provide all information that they've been provided and maybe a rationale just so they can't kind of file it in the garbage and the person is never heard from again. Somebody above them has to look at it and kind of give it some sober second thought. You know, I guess Ms Notley could still have a concern about people just closing ranks within an office. As I say, I'm looking for something that would be fairly streamlined but still gives some added protection.

Dr. Swann: I think that's a constructive suggestion, a kind of middle ground between something that's maybe onerous and complex and something that is at least giving a second set of eyes and a routine requirement on these kinds of issues.

Ms Doyle: I think we would be open to that suggestion. We'll have to have a little bit more of a look at it or whatever, but I think that makes sense from the ministry perspective.

Mr. Olson: If I could just add that possibly the supervisor should be required, then, to also respond to the person who made the complaint.

Dr. Swann: In writing.

Mr. Olson: Yeah.

Ms Doyle: That would be fine, I believe.

The Chair: It looks like we're possibly reaching a consensus here. Ms Notley, anything further on this?

Ms Notley: Well, I mean, you've already got the obligation in the act for the complaints officer to notify in writing if they say no, so I would like to see a specific person designated to review those decisions and notify in writing the outcome of the review after consulting with the complainant. So I'm adding a bit more to it, but it's still internal. I might be able to live with it if there was an identified person, like the director of complaints, who had to support the original decision in writing if requested – of course, this would all be upon the request of the original complainant, right? – and would have to consult with the complainant in the course of that decision-making process. I could see it being a possible resolution.

The Chair: Any other comment on this? Can I make a suggestion? Well, perhaps I shouldn't at this point. Is there any response? As Ms Notley said, she has added a little bit more. Is there any response to her comments? Mr. Dallas.

Mr. Dallas: Yeah. That little bit more, I guess I should suggest, just pushed me beyond the point of consensus on it. As Mr. Olson had presented the compromise, I'm prepared to support it. The little bit more I'm not prepared to support. Just so we know where we're at before we call the question there.

The Chair: Other comments?

Mr. Vandermeer: I think that to simplify it, you could have the complaints officer do it in writing, as it states, and then it has to be signed off by a supervisor rather than the supervisor doing another letter. That way at least it's similar to Raj Sherman's scenario, where a doctor gets another doctor to sign off on a decision that they make. Then it's not just some grumpy person one day.

Ms Notley: I appreciate the efforts that you're making, but I think that at the end of the day it doesn't quite meet my concerns. Because these are such critical decisions and people lose so much control over so many different areas of their lives, their potential inability to have their complaints registered is, I think, a really significant issue, subject to their ability, of course, to march into court. I think we're almost there. I do appreciate the efforts, but I don't think I can quite get there with what you're suggesting.

Mr. Olson: Just so I'm clear. My suggestion was a supervisor, and I know that that term isn't defined anywhere. Ms Notley is suggesting some person who at this point I don't think exists in the legislation, right? I take it, then, that if I were to agree with you on your suggestion, we would have to do some more work to create another position or designate somebody to do that job. I would just be interested in hearing from the people in the department whether they think, you know, that that's something that's easily doable or a problem or whether they think my suggestion of a supervisor is too vague to be of much use.

Ms Notley: Well, I'm not necessarily sure that we're that far apart. When I say "director of complaints," I'm assuming that these complaints officers have somebody that they report to. I'm just saying "director of complaints," and you're saying "supervisor." I think we're probably talking about similar things. I think that in that respect we may be talking about a similar person. I think the difference arises from that supervisor, just to say it in your language, having to ultimately write something supporting the original decision and having to consult with the complainant. Those are the two additional things that I'm adding to my request. Really, I anticipated the director probably being the supervisor of the complaints officers.

The Chair: Okay. I'm going to go to Dr. Sherman in a minute, but, Mr. Olson, you asked if the department had any clarification on this.

Mr. Olson: Yeah. You know, I'm okay with whoever this person is signing a letter or whatever saying: I've reviewed the file and I support the decision of the complaints officer.

An Hon. Member: Or don't.

Mr. Olson: Or don't. Yeah.

The second piece, though, about the consultation: does that mean that we kind of start all over? What does that mean?

Ms Notley: Well, I think they probably need to make contact or give an opportunity for the complainant to speak to them about why they think their complaint should be able to go forward to an investigator. Otherwise, the person with whom they are objecting, the complaints officer, is the filter for the information, so if there's an error there – i.e., I woke up on the wrong side of the bed one morning – it's still filtered through that experience.

Mr. Olson: If I could just respond to that. That's why the first part of my suggestion said that it would be very important that all of the information that the complaints officer has be passed to the supervisor. It's required that the complaint be in writing. You know, I would imagine that that's kind of the basis of what the complaints officer is dealing with, the written complaint, and they have to give that written complaint to the supervisor.

1:50

The Chair: Okay. At this point I'm going to ask the department if they can clarify any of the points that have been raised. The issues are: who supervises the complaints officer; the nature of the complaint, is it in writing; and what sort of sign-off procedures, if any, apply in the event a complaint officer decides a complaint should not proceed?

Ms Doyle: Okay. I'll take a run at it first, and then Cindy can add to it. The supervisor of the complaint officer would be the public guardian, so it is the head of the organization in that region. There are five public guardians. So that would be the intent. It's elevated to the most senior person because it's taken very seriously.

The intent is that the complaint be in writing. We were just looking carefully at the act to see whether or not the response to the complainant is in writing. We're just checking that. Certainly, after the outcome of an investigation always there is a response. Our practice under the Personal Directives Act is that every single complaint actually gets a letter. I might just confer with our legal staff to see that that's exactly there.

Sorry. The third question, Mr. Horne?

The Chair: I believe that was the third one.

Ms Bentz: If I could just add to Brenda Lee's comments. In the office of the Public Trustee it would likely be the director of trustee administration who would be the supervisor, who heads up probably about 45 people there. They're quite well positioned within the organization.

I guess if we go to a more detailed review by the director, it comes to the issue of resourcing: how long will this take, and do we have sufficient resources within our current structure to do that? That's a concern that I have as I listen to this conversation.

The Chair: Thank you.

Dr. Sherman, you wanted to speak on this?

Dr. Sherman: One of my questions has been answered. This is good debate on this. I have one question. The complaint officers, are they impartial? If somebody files a complaint, do they have any vested interest either way?

Ms Bentz: If it's a private trustee that they are complaining about, they have no interest because they will be a member of the office of the public guardian or office of the Public Trustee. They will be an impartial party. If there is a complaint against the Public Trustee's office, I know, Brenda Lee, that you have said in the submissions that it would be an independent party, outside of the organization.

Ms Notley: Who investigates or takes the original complaint?

Ms Doyle: I think we would be looking at the complaint as well as the investigation, that it would be independent.

The Chair: This is a good debate, and it is complex. I just need to

revisit with the committee, then, where we're at. Mr. Olson made a specific proposal for a recommendation. Ms Notley countered that with something of the same and with some things in addition. Is it the will of the committee to pursue this further as a potential recommendation in our report?

I'll make one comment. The committee has the option, in addition to recommending specific changes to the bill, to make observations. When we get time here, I've got one that I sort of want to offer that's not a specific recommendation but an observation. So there is that option as well to have some discussion and commentary in the report on the issue, lay out some of the concerns with respect to impartiality, supervision, that sort of thing. I'm just mentioning this because it gives us the option to address the issue if we can't agree on a specific recommendation to address it.

Mr. Dallas: I would suspect that that might be the compromise, to in the report indicate that there was extensive discussion in the area of review and mediation of complaints and, simply, that the committee did not build a consensus in that realm – is that what we're talking about here? – just to reflect that we had a very thorough discussion and that we simply did not arrive at consensus.

The Chair: Mr. Reynolds? That's my understanding, that that kind of commentary can be included.

Mr. Reynolds: Well, certainly it does say recommendations and observations, and I believe you could do that. Of course, we're at the hands or mercy of the committee, if you will, as to what you want in the report, how you want to address this issue. Is it your direction that there should be an attempt by staff to try and come up with some wording that reflects the discussion and the concerns that were raised about the safeguards that are or are not in place with respect to a complaints officer dismissing a complaint on the grounds of being frivolous or vexatious? I'm not sure what that would consist of except a statement that at this stage there was some discussion about it. Or is it the scenario where the committee would like the department or the minister to look at building in such safeguards or additional safeguards for that section?

I just raise that because we could come up with some wording, but we have to know the intention of the committee on that, with all due respect.

The Chair: Right. So the commentary would need to indicate an action statement of some kind, so to speak. One possibility might be to recommend that the minister undertake further review. Am I following you?

Mr. Reynolds: Yes. I mean, that would be it. If the committee directed that we should just write that there was a discussion and disagreement about this – that's not usually what goes in the report, but if the committee wanted us to put it in, we could.

Dr. Sherman: We're so close. This is like a real estate deal. It's like a $200,000 deal, and we're five bucks apart.

Mr. Olson: Okay. Keep the fridge and stove.

Dr. Sherman: I say we keep discussing this. I think it's a cop-out if we don't reach consensus here. We're so close. I say we keep discussing it until we actually come to a consensus.

I do understand Ms Notley's concern. That's why I asked if they're impartial. You know, I've been back and forth on this so much. I think this is that person who keeps it out of the courts. Okay? The complaints officer is that person; they are impartial. What you're really referring to, Ms Notley, is: does this process work, the complaints officer process and the public guardian's office? Do they work, and are they accountable?

Really, we need some accountability here for these folks, which is that the complaint should be in writing, and they should get an answer in writing, whether it's investigated or it's not investigated, and they should be given reasons in writing as to why it's not investigated. This is the process that keeps it out of the courts, and if this does fail, adding some other person who has no teeth is going to end up the same thing. I believe that is what the courts are for. I don't think it's in the best interests of the complaints officers and the process there to go to court. That's a failure in diplomacy. My sincere belief is that if they're impartial, they will do a good job, and if things do fail, maybe we do need to go to court to get a clarification from the judicial system.

I think I've come back to that I agree with Ms Notley that we do need to have safeguards for the patients because we have to pretend that we are the people. Thirty years from now we are going to be those people, so on my side we do need those safeguards. Yes, we do need to stay out of court, and I do believe that the intent of this process is to keep us out of the courts, but if it doesn't work, maybe we need further clarification from the courts.

We need to come to a consensus here. We need to make a decision, I believe, and I think we can. I don't know if Ms Notley can compromise a little bit more and if we can a little more.

The Chair: Well, Dr. Sherman, if you'd care to switch places with me, perhaps you could negotiate this.

I just noticed the clock, and I apologize to the committee. We've been at this for a couple of hours almost, and I haven't offered a break, so I was going to suggest that we take a short break. There are a couple of other items to do with the report as well that we have yet to discuss. So if you're in agreement, I'd like to propose we break for 10 minutes and then come back. Agreed?

Hon. Members: Agreed.

The Chair: Thank you.

[The committee adjourned from 2 p.m. to 2:21 p.m.]

The Chair: Okay. Good afternoon again. We're back on the record. Dr. Swann, are you with us?

Unidentified Speaker: This is actually Dr. Swann's aide. David has gone to the washroom at the moment, and he'll be right back.

The Chair: Well, we'll note that. You are aware that these proceedings are recorded in *Hansard* and public.

Unidentified Speaker: Great. Fair enough. Okay.

The Chair: Thank you very much. We're still discussing issues with respect to the complaints process proposed in the bill.

Mr. Olson: Well, Mr. Chair, I think this has been a very fruitful debate for all of us. I think we agree on principle, but maybe exactly on how we get there we're not entirely together. I think one thing, though, that has been noted by myself and a number of colleagues here is that in section 75(3)(c), the complaints officer has to notify the complainant of the decision, but it doesn't say that it has to be in writing, and I'm thinking that there's probably a consensus that that

decision of the complaints officer needs to be in writing. The complaint needs to be in writing; I don't know why the response wouldn't be in writing.

Beyond that, you know, some suggestions have been made about how to deal with a refusal by a complaints officer to refer to an investigator. I'm thinking at this point that we've kind of debated that exhaustively, and I don't think we have complete consensus. I think some members still feel as though there's work to be done there. Also, I think a number of us feel as though, you know, the refusal of a complaints officer, if that is referred to a supervisor who has to then respond to the complainant, is sufficient. So perhaps the minister would like to take that matter and do a little bit more work on it. My feeling is that if the complaints officer's decision with all of the paperwork went to the supervisor and the supervisor then responded to the complainant, that should be sufficient, but others feel that that's not sufficient.

The Chair: So if I might paraphrase a bit just to make sure it's clear, then. The first part of the proposal would be that section 75(3)(c) be amended to require notification in writing in response to a complaint.

Then the second part would be that in the committee's report we note the considerable discussion in the committee with respect to this issue, highlight some of the concerns identified, and recommend that the minister undertake these for future consideration.

Mr. Olson: Yes.

Ms Notley: Sorry. Just a clarification. I think I must be using the wrong bill because when we're talking about it, I've got 76(1)(c).

Mr. Olson: I'm sorry. That's right.

Ms Notley: Okay. Just to clarify that that's what we're talking about.

The Chair: Thank you.

Any further discussion on this?

Ms Notley: I think that your summary probably best outlines, I would say, that some members have some remaining concerns about 76(2) and the oversight of its administration and would like there to be further consideration by the ministry on how to provide for fairness to complainants.

The Chair: Okay. Further discussion? We agree? Thank you very much.

Are there any other matters that members would like to raise with respect to our report?

I'd like to mention one, if I could. We did have some discussion about the criteria for capacity assessment and the identification of capacity assessors, and section 115 of the bill provides that the minister may deal with those through regulation. I know that there was concern expressed from all sides of the table about the need to not only have some clarity around those but also to consult perhaps a little more with some of the key stakeholders. We had a number of presentations where people expressed opinions about, for example, which health profession should be designated as capacity assessors under the regulation. We also discussed concerns about potential overlap between criteria in the Mental Health Act with respect to competency and criteria yet to be determined in regulation in this bill with respect to capacity.

I wanted to suggest to the committee that we may wish to consider noting, in a similar vein to the last subject, that concerns were expressed as I've just described. In this case what I'd suggest is that we recommend that the minister undertake further consultation as required with appropriate stakeholders in the development of the regulation.

Any feedback on that? Is there support for that?

Mr. Olson: I would support that.

The Chair: Okay. It appears we have consensus on that.

Anything further, then?

It was suggested that the chair attempt to do a recap of the areas where we've reached consensus in the meeting, knowing, of course, that the chair is relying on the more detailed notes of the research staff who are here with us today. So I'll attempt to do that, and then I'll ask people to correct me on the record if there's anything that's inaccurate or confusing.

My understanding with the document tabled by Mr. Olson with the committee is that consensus was achieved on all points with the exception of the proposal with respect to section 33, guardianship plans. In that case we agreed that we would await further clarification in drafting in the final report and then discuss the issue again in light of that clarification. Am I correct?

The next thing I recall is that we also agreed we would await proposed language from legal counsel with respect to the age of majority. That's the proposal under section 26, which was a clarification item where it was suggested that the wording should appear as: in respect of a person one year under the age of majority. That's simply to allow an opportunity for Legislative Counsel to compare this with other legislation and what plans they might have had across all legislation to clarify such references.

Then the third area, which was not part of this report. The last two we just discussed: section 76(1)(c) with respect to a response to a complaint that the notification must be in writing; in addition to that, the discussion that we just had on the notation in the report about our discussion on the complaints process and the notation of disagreement by some members and the concerns that were expressed there. Then, finally, the discussion we just had with respect to the regulation under section 115 for capacity assessment criteria and the identification of health professionals to act as capacity assessors and the recommendation that the minister undertake further consultation as required in the draft of those regulations.

Have I got it, colleagues?

2:30

Ms Notley: Yes, I think that covers everything.

There are about two or three items that we haven't addressed that remain in the document prepared by the LAO staff. Are we still going to go back to those ones?

The Chair: I wasn't planning to. That's why the document was prepared in advance, so that members could review it and then perhaps come forward if they had specific proposals. Are there any you'd like to raise?

Ms Notley: Yes. I'm sorry that I didn't mention it before. I don't believe we covered this in our conversation about the age of majority. I'm talking about the power of the trustee to support dependants of the adult past age 18 under section 56. There are recommendations made that the guardian have the authority to provide for a dependant of a dependent adult past the age of 18 in the event that they're going to university. I believe that was the issue. I would want to suggest that we consider that provision.

The Chair: Okay. Ms LeBlanc, can you just help us a bit? In your document I know that you made note of this.

Ms Notley: It's on page 6.

Ms LeBlanc: Yes. It is referring to section 56(3). That's talking about the ability of the trustee to support dependants of the represented adult. It includes minors under the age of 18, but it doesn't include children that are over the age of 18. The submitter wanted to include the ability for the trustee, without having to first go to court, to provide for children that were over the age of 18 that were attending a postsecondary institution of some kind.

The Chair: Any discussion on that point? That's at the top of page 6 of the report from Ms LeBlanc.

Can I just ask a clarification question? Would the minister have the ability to make regulations to provide for this under the bill?

Mr. Bowes: The act currently does not provide regulation-making authority with respect to that particular issue. Towards the end of the document, that I believe everyone would have, the supplemental information dated October 7, we've sort of set out the existing legislation. It doesn't set out a position one way or the other, but it just sort of describes how the bill came to be worded the way it is. Essentially, it's the same wording in that respect as the existing act, and it follows the Dependants Relief Act. During the consultation – that is, the consultation that led up to the bill regarding the Dependent Adults Act – this particular point about providing support to an adult child who is a full-time student simply was not raised or considered. So I guess it would be fair to say that you shouldn't read any sort of implications into the way the bill is drafted in terms of the consideration of that point.

The Chair: Any other comments on this? Is there a willingness to proceed with this discussion at this point? Okay. It would appear that there is not, other than Ms Notley having raised it, of course.

Ms Notley: Yeah. I guess so. I would recommend that we make the changes necessary, however benign they need to be, to allow for regulatory authority to address the problem. I see that we've attached sections of other acts. For instance, the Family Law Act does define a child to include someone who's between the ages of 18 and 22 and attending a postsecondary institution. It appears to me in the supplementary information that by not allowing for that regulatory authority, we inadvertently set up a situation where guardians and trustees are having to go to court. I thought we'd kind of all agreed that if we could avoid that where necessary, we would. I think this is actually about streamlining the process and allowing for the ability to address the problem without having to go before the courts, unless I'm missing something.

Mr. Dallas: Mr. Chairman, not having dealt in matters of this nature before, I'm struggling a little bit. What's going through my mind is that if a dependant has a child who's reaching the age of majority, whether they're going to postsecondary or not, I'm guessing that it's probable there are a number of other significant decisions that may transpire at that point that in fact may require further review of the court, and it might be entirely appropriate that that event trigger such a review. Further, I suspect – well, I'm sure our legal advice would speak to this – that there would be considerable jeopardy around redefining the definition of a child or that type of thing as it might be interpreted in a variety of circumstances, you know, and have unintended consequences.

I think the idea is good here, but I'm wondering if there's really a practical way to go about doing this. In fact, if we thought about it further, while we've identified the issue of funding postsecondary education, I'm rather suspicious that there might be a whole number of other issues that would surface if we really drilled down into what types of events would transpire in this particular circumstance.

The Chair: Thank you.

Any other comments? Mr. Olson.

Mr. Olson: I think I spoke to this at our last meeting, and I'm somewhat reluctant to broaden the wording to include adult children other than adult children who are dependants in the same way they would be in the Dependants Relief Act. I like it the way it is. I'll just leave it at that. I could expand on it, but I did that at the last meeting. I just think that in most cases people, you know, should take responsibility for planning ahead for their own future and the future of their family, and that can be done by enduring powers of attorney and so on.

Certainly have done lots of enduring powers of attorney where people have given that kind of authority to their attorney, but I think that for the sake of creating some clarity for the person who is going to be doing the job, somebody who is appointed by the court, it's simpler to leave it the way it is. In any event, the court does have power to allow those kinds of provisions if the case can be made. So I'm happy with it the way it is.

The Chair: Other comments from other members? Okay.

Thank you, Ms Notley, for raising it. It would appear to the chair that there is not a willingness to pursue a recommendation on this at this point. Thank you.

I think we've covered the areas and provided some clarity.

Yes, Ms LeBlanc.

2:40

Ms LeBlanc: Thank you, Mr. Chair. I think I just need some clarification on one of the issues that's on page 5 of the draft report, and that's service of the order on the adult. It wasn't discussed today, but last meeting I believe there was near consensus that that recommendation of the submitter should be approved. I just wanted to confirm that before I put that in a draft report.

The Chair: Actually, Ms LeBlanc, if it hasn't been raised at the meeting by a member and discussed, I don't think we have to worry about going back because your document provided us with a guide to study and consider this between last meeting and this one. Since you've raised it, are there members who want to raise this for discussion?

Mr. Olson: Well, I just remember making the comment that it's a worthwhile provision to have in there to not have to be serving people automatically if there's no benefit to serving them because they're not going to realize they're being served. I was just flipping through my papers looking for the part in the commentary where it was being discussed, but I have to confess at this point that I can't remember what our position is on this. Am I in the majority or in the minority on taking that position?

The Chair: Others?

Mr. Olson: If you'll just bear with me while I look for the section. Right. The way it's worded right now, it says that if the court believes that it would be harmful to the adult, they can dispense with service. I think I would be prepared to go further and say that if it

serves no useful purpose, they could dispense with service. I think maybe that was the question, if I recall.

Mr. Bowes: That was the issue.

Ms Doyle: The concern of the ministry is that it's very difficult to evaluate what is no benefit, and it's a pretty substantial right of the person to be notified. So the perspective of the ministry was that we weren't agreeing to it being waived because it's such a substantial right and that harm is something that's a little clearer.

The Chair: Mr. Dallas.

Mr. Dallas: Thank you, Mr. Chairman. I wonder if Ms Doyle could provide an example of what would constitute harmful.

Ms Doyle: We've certainly had situations under the Dependent Adults Act where it's known from the time of the capacity assessment or from the application that by receiving the documents, it's going to cause the person to be psychotic, or if they're in a psychotic state, it's going to make them worse. That is information that we would get from an expert, where it was clear that that was going to cause harm. Under the Dependent Adults Act if they are waiving the notification, it has to come to the public guardian, and we'd look at that matter. Certainly our practice has been that the person should be notified unless there's a very clear, demonstrated reason not to, because it's a rights issue.

Mr. Olson: Well, I've made applications where we have in the doctor's report or somewhere in the assessment documents information that indicates that they believe the person would maybe do themselves harm or do other people harm if they're upset by having the documents served on them. So we're relying on, as you say, an expert or somebody to give that kind of information to persuade the court to dispense with service. It just seems logical to me that if we can rely on that kind of information from medical people, we should be able to rely on similar medical information from a doctor saying, "They're in a coma" or "They're 90 years old, and they're beyond ever being able to understand what's being given to them because they're virtually comatose, so it's not necessary to serve them." I think there's room for that kind of an application as well.

Ms Notley: Well, I sort of tend to agree with the recommendations and the concerns expressed by the ministry. I think we rely on expert opinion as much as we can, but no expert opinion, particularly in the area of someone's mental health or cognitive state, is foolproof. Frankly, if it's opinion A one day, medical opinions and status can change. It's no one's fault; it just happens. Where the criteria is no harm, there is value to the represented adult to have that consideration made even with its possible downside built into it; i.e., the possibility of the expert evidence having some problems with it.

In this case what we're talking about is: will it have zero benefit or benefit? But it's no harm. There's no harm done if the person gets notice. There is potentially harm done if the expert opinion is not correct and the person doesn't get notice. We're actually opening the door for there to be more potential violations of the person's rights based on the built in imperfection of expert opinion in these areas. Service is a fundamental natural justice right. It's something that should be considered to be denied in the most limited of circumstances. I don't believe that inconvenience is one of those circumstances. If there's no negative that comes from service, then I don't see why you wouldn't just always err on the side of ensuring that that right is maintained.

The Chair: Any further comment on this?

Well, if I could ask, I'd like to express an opinion on this one as well. I guess, just knowing what I know about the mental health system and my experience in it, I sort of agree with the question of the determination of no benefit, that being in many cases quite a complex thing to determine. The other thing that would concern me is not just if the person were able to understand the nature of the service but also the feelings of the family members or others that are in attendance with the person and about the perception of denial of right of service to that individual, incorrectly perceived perhaps, on the basis of his or her capacity.

Mr. Olson, while I appreciate your point about unnecessary service in a situation where there would appear to be no benefit, I guess I'd sort of have to err on the side of the right of the individual concerned, the complexity that's involved in the determination of benefit or no benefit, and the feelings of those who, hopefully, are around the individual trying to support the individual. Those would be concerns for me in terms of an amendment such as the one that's proposed.

Any other comments on this?

Dr. Swann: I support the comments of the chair there. Thank you.

Mr. Olson: I've had my say. I can see that I may be a salmon swimming upstream here, but I'm not changing my mind. I don't know how that translates into the committee's report. Maybe it could say that some people had some reservations.

The Chair: I don't think there's any harm in making the notation that we discussed the issue and that some had some reservations. It's not in our terms of reference that we have to have consensus on every issue.

I think, then, that we're through in terms of the report. Did I sound too hopeful when I made that statement?

2:50

Mr. Olson: If I could, Mr. Chair, I'm just wondering where we're at with the report that came on compensation for guardians and trustees. It was a really good piece of work to give us a sense of what's happening in other jurisdictions. Again, at the risk of repeating myself, I think I was trying to make the case at the last meeting for there being some provision for compensation for work done by guardians just to encourage families to look after family members.

The Chair: If I can just clarify, you're talking about compensation for time and effort in addition to direct expenses?

Mr. Olson: Right.

The Chair: Did you wish to propose . . .

Mr. Olson: The first thing I need to do is read the provision. Can somebody help me out with the section number? Oh, it's 19.

Ms Doyle: I think it's 37.

Mr. Olson: I'm sorry. Co decision-makers is 19.

Again, just to reiterate, I think we want to encourage families to look after family members. With proper supervision I don't see why it wouldn't be reasonable for somebody who is doing guardianship type of work to be compensated. They can be for looking after mom's or dad's money, so I don't know why they can't be for looking after mom or dad.

The Chair: Mr. Dallas.

Mr. Dallas: Mr. Chairman, thank you. I think my colleague has presented some excellent ideas today, but I want to state that I'm completely satisfied with the way that this schedule is presented in the act.

Mr. Quest: I think I support Mr. Olson. I just don't know how those amounts would be established and what the supervision would be and how we'd ensure that it wasn't abused and so on. I mean, it's a big topic. But the idea: absolutely. I mean, if one family member takes on that responsibility and in many cases, as we know, has to give up other opportunities, employment opportunities, to do that, then we do need to take a look at some type of compensation for time because if the family doesn't do it, we end up doing it.

The Chair: Okay. Others?

Mr. Vandermeer: I'm completely satisfied with the way that it's written here. I think that if you open it up for compensation and fees and allowances, you're opening it up for abuse. I know of situations as well where some family members will lord it over other family members and do more work than they even need to do, but for some reason they choose to do that. Now, if they're going to be able to start billing for hours, I think that just opens it up for abuse.

The Chair: Mr. Olson, anything further? It doesn't appear to me that we likely have consensus to pursue this at this time.

Mr. Olson: I was just wondering if my colleagues to the right are making an argument to take that out of the trusteeship provisions, then. Because trustees can be compensated, it seems to me that the same abuses are possible, and you could have the same kinds of safeguards.

I notice, for example, that in Saskatchewan – well, at least a few of the jurisdictions actually have fee schedules. Yukon has a fee schedule. I don't know what those are.

Well, I think I've said enough. Obviously, there won't be any consensus on this one either.

Dr. Swann: I guess I'm wondering from Calgary-Mountain View if you want to make a motion. I happen to support that. Working as I have at some distance from these issues except more recently in a personal relationship to family members, I see that it might – you know, recognizing the importance of the guardian's role equally with that of a trustee seems to me to naturally result in more support for people who are dependent. I would support that suggestion. I would think that it might be useful, though, for the record at least, to put it into some kind of a simple motion and let the chips fall.

Ms Notley: Well, I think I've changed my mind about three times on this issue just in the last 10 minutes, so I'll share that. On one hand, there's a part of me that says that it makes no sense that people are compensated for managing money and not compensated for caring for people. The problem is the source of that compensation, which is the bank account of the person being cared for.

Typically, people who have trustees, particularly trustees who are, you know, getting compensated in any notable way, have assets and probably more assets than others. I worry about those situations where the person who is a represented adult may have very limited assets. Then, of course, the guardians themselves are engaging in a much more sort of – they're not just talking about money. They're dealing with a whole bunch of different elements of decision-making around these persons' lives. There are all these different opportunities for there to potentially be conflict, and then on top of it the guardian may be taking money from the bank account of the person they are caring for.

I sympathize with the guardian. I mean, it's often women, it's the sandwich generation, and it's all those people that I say I speak up for who are the guardians and who should be compensated. But on the flip side, it's also coming from the bank account of the represented adult. So I'm not comfortable with that either.

I'm not sure what the experience is in the other jurisdictions for how the compensation is calculated, whether it's income tested before or whether the calculation considers income of the represented adult in the calculation, whether there's more or less for different type of help that's provided. I mean, it really is a very complicated issue where people's rights, again, are significantly affected. So I'm reluctant to just recommend it without there being some really clear guidelines in place for how that might be done.

The Chair: Thank you.

Others? Dr. Sherman.

Dr. Sherman: I just need some clarification on compensation and expenses. Say one's parent fell ill and you moved them into your home and you incurred expenses and so on. It naturally takes time. You would otherwise have a nurse or a home-care provider. We don't have any home-care providers out there. We have a big shortage of home-care staff. The time required to look after your family member – most families are working families, and a lot of the working families are single-parent homes. So the challenge we face here is, one, the abuse, as Mr. Vandermeer brought up, and that has happened; at the same time, if nobody looked after this person, they would end up in an emergency department awaiting long-term care placement.

So would that be expenses, keeping your parent at home with you, or would that be considered compensation?

Ms Doyle: Would you like me to respond?

The Chair: Please.

Ms Doyle: As you can see, this is a very complex issue. We certainly looked at all of the other provinces; Stephanie did, as well, in her research. In response to the question of if a person was living in someone's home – say your mom was living in your home and you were providing care and there was food – Bill 24 is really around compensation for time spent as a guardian. It's not caregiving time. A person could be a caregiver, and they could be compensated for their time. This is really time and effort around being a guardian, that decision-making. You know, we see them as two separate issues even if it's the same person. I don't know if that helps.

3:00

The Chair: Mr. Vandermeer.

Mr. Vandermeer: Yeah. It's also helped Raj out that it is already in 37(1), where the guardian is entitled to reimbursement for direct expenses. So that's already taken care of. I also believe that we have a duty in our society to take care of loved ones and that it's not necessarily the responsibility of government.

The Chair: Mr. Olson, if I could, I'm going to suggest that we're probably not in a position to pursue this right now, just going by the opinions around the table and also some of the additional informa

tion we might want to have. It doesn't mean that it couldn't be discussed again at the next meeting. Would you be comfortable with postponing that?

Mr. Olson: That's fine.

The Chair: Okay. Thank you.

All right then. I think we've completed our deliberations on the bill up to this point. If I could, then, I'm going to suggest we move to the next item on the agenda. Just to position us for the next meeting on this, I would like to ask if a member would be willing to move that

> the Standing Committee on Health recommend that Bill 24 proceed and direct the Legislative Assembly Office committee research staff to draft a final report outlining the committee's observations, opinions, and recommendations with respect to Bill 24 for review and approval by the committee on Wednesday, October 15, 2008, as scheduled.

Mr. Quest: Agreed.

The Chair: Mr. Quest. Agreed?

Hon. Members: Agreed.

The Chair: That's agreed. Thank you.

Okay. I'd like to go on, then, to item 5. It shouldn't take us too long, colleagues, to get through the balance of the agenda. In your meeting package you received committee budget estimates for the year 2009-2010, and in the estimates you'll note that pay to members is no longer included in the individual committee budgets. Of course, this is as a result of the decision by the Special Standing Committee on Members' Services that adopted a different mechanism of remuneration of members appointed to legislative committees. That happened a number of months ago. So in case you were wondering why that item doesn't show up, it is because the pay to members is now reflected in a separate portion of the overall committee budget envelope. Most of us are new around the table here, so this wouldn't have been an issue for us likely anyway, but our remuneration is provided for in a separate budget envelope that provides for all committees of the Legislative Assembly.

I've been asked to highlight other notes here. Advertising costs are based on the estimated costs for running two province-wide campaigns for the committee during the year. Other budget items reflect actual use and are based on directed 5 per cent increases.

We're being asked to approve a motion to

> send this budget estimate to the Speaker for consideration by the Special Standing Committee on Members' Services in the overall Assembly budget process.

What I want to say in the course of doing that is that if any committee of the Legislative Assembly requires additional resources, there is the opportunity to have those resources allocated from the overall committee envelope. Recognizing that we haven't really finalized our work plan for the balance of the year and we don't exactly know, perhaps, what some of our requirements will be – advertising might be an example – we have the opportunity to draw on those additional resources.

The request here is that as the committee we formally approve this budget estimate and send it to Mr. Speaker. Moved by Mr. Dallas. Any questions or concerns? Discussion? Those in favour? Opposed if any? Carried. Thank you very much.

Finally, I just wanted to talk about upcoming meetings. There are two scheduling issues that we've been working on between meetings. The first is the dates for public meetings; that is to say, requests by groups that have approached the committee and asked to present to the chair on issues other than those referred by the Assembly. I believe that members have been polled for three dates in November, and we're just in the process of comparing the availability. I would hope that within a day or two we'd be able to get back to you with the two dates that work for most of us.

Ms Notley: I don't recall getting any . . .

The Chair: Can you help us, Madam Clerk?

Mrs. Dacyshyn: Sure. Your office might have responded on your behalf. I can check it, though. We sent out an e-mail looking at dates of November 3, 17, and 24 from 8:30 to 11 a.m.

Ms Notley: The 3rd, 17th, and 24th?

Mrs. Dacyshyn: Yes. I can send it to you again. Your office responded.

Ms Notley: Oh, did they? Okay.

The Chair: So it's good, then, that we're taking another couple of days on this. Will that give you an opportunity, Ms Notley, to let us know? We'll work with members on it. The other option for meeting times during session is the 5:45 to 7:15 p.m. time period, although, as we discussed at the last meeting, we wouldn't be able to hear as many presentations as we could in a three-hour time block. I know there are some conflicts on the chair's part and some other members', too.

Okay. Then the other scheduling item which I'm working on and I should have finalized shortly is the invitation to the Minister of Health and Wellness and the acting chief medical officer to attend an upcoming meeting to discuss public health issues. We should have that confirmed fairly quickly. That should allow us to at least know three set meeting dates between now and the Christmas period.

Ms Notley: Can you give me just a heads-up of what times you're looking at and what month you're looking at?

The Chair: Can we do that by e-mail?

Ms Notley: Yes. Absolutely.

The Chair: Okay. Are there any other items members would like to raise for discussion?

In closing, I just wanted to thank everyone. I think the members of this committee have worked extremely hard and have been really diligent in their review of the bill. We still have the final process, which comes up as we approve the final draft of the report, but I think it's safe to say that we dealt with all the substantive matters today in quite a bit of detail. I know a lot of preparation went into this before the meeting on the part of members, and I really appreciate your attention to this. It was not a simple bill. There's a lot in here.

The date of the next meeting, then, is currently scheduled as Wednesday, October 15, from 5:45 to 7:15 p.m. Those dates were set some time ago, so that should already be in your calendar.

If there's nothing further, I'd ask for a motion to adjourn. Moved by Mr. Fawcett. All in favour? Opposed, if any? Okay. Thank you very, very much.

[The meeting adjourned at 3:09 p.m.]

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