Title: Tuesday, April 11, 2006 Private Bills Committee
Date: 06/04/11
Time: 8:32 a.m.
[Dr. Brown in the chair]

The Chair: Good morning, everyone. We'll call the meeting to order. Before we call in the petitioners on the two bills that we're going to hear about today, I would like to have a motion to approve the agenda as circulated. Mr. Liepert. All in favour? That's carried.

The second order of business is the approval of the committee meeting minutes of March 21, 2006. Could I have a motion to approve the minutes as circulated? Mr. Groeneveld. All in favour? Anyone opposed? That's carried.

Then we'll invite the petitioners for Pr. 1 to come in.

[Mr. Kaye and Ms Matthews were sworn in]

The Chair: Good morning and welcome. Before we proceed, perhaps I could ask the representatives of the petitioner on Pr. 1 to introduce themselves, and then we'll go around the table and have the members of the committee introduce themselves.

Ms Matthews: Good morning. My name is Siân Matthews. I'm a solicitor with Bennett Jones in Calgary, and I'm here representing the petitioner, Royal Trust Corporation.

Mr. Kaye: I'm Garry Kaye. I'm a senior trust adviser with Royal Trust Corporation of Canada, trustee of the Burns memorial trust.

[The following members introduced themselves: Mr. Agnihotri, Dr. Brown, Ms DeLong, Mr. Elsalhy, Mr. Groeneveld, Mr. Liepert, Mr. Lindsay, Mr. Lukaszuk, Mr. Mitzel, Mr. Prins, and Mr. Rodney]

Ms Marston: Good morning. Florence Marston, assistant to the committee.

Ms Dean: Shannon Dean, Senior Parliamentary Counsel.

The Chair: I believe the petitioners are familiar with the procedures which outline the role of our Private Bills Committee in the process. This morning we are going to ask you to make a brief presentation about the reasons for requesting the private bill. I presume that you will also comment on the reasons why this cannot be done through public legislation. That will be followed by an opportunity for the members of the committee to ask any questions of the petitioners relating to the content of the bill and the reasons for the bill.

I will just remind the petitioners that it's the role of this committee only to make recommendations to the Legislature on whether the committee, in their opinion, recommends that the bill would proceed as originally presented in the House at first reading, whether it should proceed with amendments, or whether it should not proceed. There won't be any decisions made today. The committee will meet again on May 2 to deliberate on the bills which are presented today. It will not be necessary for the petitioners to appear at that time. You will be notified of the decision promptly after that May 2 meeting.

If the committee recommends that the bill proceed, then it will be returned to the Legislature to be carried by the sponsoring member, in this case Mr. Rodney, through the normal stages of the bill passage.

With that, I will invite the petitioners on Pr. 1 to proceed with their presentation.

Ms Matthews: Thank you and good morning. Perhaps I'll just start off with a really brief bio of Senator Patrick Burns. I know that the hon. members from Calgary would be very familiar with him but perhaps for some of the others. Patrick Burns was born in 1856 in Ontario and homesteaded just outside of Winnipeg, Manitoba, as a cattle rancher. He soon expanded his business significantly beyond just ranching and with the railway boom started shipping and buying and selling and slaughtering and retail sales of beef. By 1890 he had settled in Calgary, married, and had a child and by the First World War had established himself as one of Canada's leading businessmen.

He was one of the big four that founded the Calgary Stampede and was chairman of Burns Meat Company, a company you're all familiar with, I'm sure. In 1828 he sold his packing business but retained the ranches, some of which are still in family hands. He became a Senator in 1931 and died in Calgary in 1936. There's a high school in Calgary named after him, and he has also been inducted into the Canadian Business Hall of Fame.

Under his will Senator Burns established a charitable trust later codified under the Burns Memorial Trust Act. The act was originally enacted in 1956 and has been amended in 1981 and 2001. The trustee of the Burns memorial trust is the Royal Trust Corporation of Canada, and it distributes certain of the investment returns earned on the assets of the Burns memorial trust to five beneficiary organizations. They are the governing council of the Salvation Army in Canada, the Sisters of Charity of Providence in Calgary, the Burns memorial fund for children, the Burns memorial police fund, and the Burns memorial fire fund. The income from the trust property is distributed equally in quarterly instalments among the five beneficiary organizations. The trust property is currently valued at approximately $45 million, and distributions from the trust have been about $1.8 million annually.

8:40

So to the issue at hand. In 2001 the act was amended to permit, among other things, the trustee to have the authority to invest the assets of the Burns memorial trust according to prudent investor standards in accordance with a total return investment policy. The act was also amended to deal with payments made to beneficiaries, and in particular section 8(1) of the act was amended in this way:

> Once in each fiscal year, the Trustee shall pay an amount from income or capital, determined in accordance with the regulations dealing with the disbursement quotas for private foundations in the Income Tax Act (Canada), in equal portions to the Beneficiaries.

Any excess investment returns were essentially capitalized.

What this means is that the amount of income generated from the endowment that is distributed to beneficiaries is fixed by a formula, and that formula is the disbursement quota for private foundations as determined under the Income Tax Act (Canada). The disbursement quota is really an amount that is fixed under the Income Tax Act to ensure that registered charities in Canada expend at least a minimum amount of their investment returns on their charitable activities, that no charity is able to sort of perpetually accumulate its income, but that it's forced on a regular basis to expend at least a minimum amount of investment returns on its endowment funds for its charitable purposes and on its charitable activities.

The disbursement quotas for private foundations are, very generally stated, a sum of three different amounts. First, 80 per cent of current donations. So if you or I were to make a donation at the door of $20, 80 per cent of that would have to be expended in the year following. The second amount is 100 per cent of amounts transferred from other registered charities and, finally, 3.5 per cent of the value of the investment assets of the registered charity.

Now, the Burns memorial fund doesn't accept donations. It

doesn't receive any transfers from other charities. Essentially what we're looking at for the Burns memorial trust is that 3.5 per cent of the approximately $45 million of its endowment assets are expended annually by quarterly payments to these five beneficiary organizations.

At the time of the amendment to section 8 of the act in 2001 the disbursement quota was 4.5 per cent. In other words the trustee calculated an amount that was equal to 4.5 per cent of the investment assets of the fund and expended that to the beneficiaries. However, federal budget amendments to the Income Tax Act reduced that amount from 4.5 per cent to 3.5 per cent for taxation years commencing after March 22, 2004. The Burns memorial trust has a calendar fiscal period. As a result, the disbursement quota for 2004 was 4.5 per cent of investment assets but was reduced in 2005 to 3.5 per cent of investment assets.

The financial impact of the lowering of the disbursement quota rate has been to reduce the annual payments to the beneficiaries from approximately $1.8 million to about $1.4 million per year. Each beneficiary organization that previously received about $364,000 per year for their charitable activities now receives $284,000, and obviously that's a big impact on these organizations. They've had to revise their budgets and restrict some of their charitable activities and programs to deal with the reduced payments that are coming now from the Burns memorial trust.

The trustee of the Burns memorial trust and the beneficiaries wish to amend the act to allow the trustee the discretion to pay to the beneficiaries an annual amount that may be in excess of this minimum disbursement quota. Rather than an inflexible fixed percentage of 3.5 per cent, the trustee and the beneficiaries would like the act to provide discretion to the trustee to pay out of annual income amounts in excess of the disbursement quota if appropriate.

Thank you.

The Chair: Questions? Mr. Rodney.

Mr. Rodney: Oh, no, I don't have any questions. I've been briefed extremely well by counsel here. My biggest question originally was: who could possibly oppose this? The answer that we talked about was: absolutely no one.

I don't know if you care to comment, Ms Matthews or Mr. Kaye.

Mr. Kaye: That was what we were discussing just before the meeting, that we can't see anybody that would have any problems with this particular amendment. It just makes all the sense in the world, and it benefits these charitable beneficiaries.

Mr. Liepert: Just one quick question so that I make sure that I totally understand it. If my math is correct, previously 90 per cent of the proceeds were distributed, and under the change to 3.5 per cent it becomes 70 per cent. Is that right?

Ms Matthews: No. The change before was that the amount of income distributed was calculated according to a formula that looked at 4.5 per cent of capital. So, you know, it's as if you'd had an investment return of 4.5 per cent, and now that's 3.5 per cent.

The Chair: I have a question, a general question. Is the trust property managed in accordance with endowment principles? In other words, is there an allowance for inflation, that only the excess over and above the inflationary investment product is returned to the beneficiaries?

Mr. Kaye: The investment portfolio is professionally managed, and all factors are taken into consideration, including capital growth and excessive inflation, making sure that even after the disbursements are made, there's still growth in the portfolio that will enable the overall portfolio to increase in size over time at a rate that at least matches inflation, hopefully exceeds it. Investment policy for the trust has been formally set and approved by the beneficiaries as well as the trustee. That investment policy is actually discussed openly and at meetings with the beneficiaries, and everyone is onside with that policy.

The Chair: I'm not sure if you answered my question. My question was: is there an increase in the fund that's proportionate to inflation? Is the corpus of the endowment increasing at the rate of inflation in order to preserve the value of the fund? I guess that's my question.

Mr. Kaye: Yes, it is.

The Chair: Okay.

Any other questions? Ms Dean.

Ms Dean: Thank you. If this change were to go through – and this is a question for either counsel or Mr. Kaye – how would the disbursements to your beneficiaries compare to the formula used for other foundations with similar objects to the Burns trust?

Ms Matthews: Thank you. The benchmark in Canada for registered charities in terms of what they commonly distribute either to other beneficiary organizations or on charitable activities is currently 5 per cent. So if you were to go to the Calgary Foundation or the University of Calgary, for example, and say, "What percentage of your endowment assets do you make available for your charitable programs?" that percentage right now is 5 per cent.

The Chair: Thank you for your presentation this morning. As I said, we'll be deliberating on May 2, and we'll advise you soon thereafter.

Ms Matthews: Thank you very much.

Mr. Kaye: Thank you.

8:50

[Mr. Chamberlain, Mr. Ewasiuk, Ms Mrazek, Sister Stefaniuk, and Mr. Wispinski were sworn in]

The Chair: Good morning and welcome to the meeting of the Private Bills Committee. We'll begin by introducing ourselves. I think we'll start with our guests, starting with Ms Mrazek.

Ms Mrazek: Marg Mrazek, and I'm legal counsel representing the Mary Immaculate hospital of Mundare corporation.

Sr. Stefaniuk: Sister Eugenia Stefaniuk, Sisters Servants of Mary Immaculate.

Mr. Ewasiuk: Rick Ewasiuk. I'm with the firm of Reynolds Mirth Richards & Farmer. We're also representing the Mary Immaculate.

Mr. Wispinski: Tom Wispinski. I'm chair of the Alberta Catholic Health Corporation.

Mr. Chamberlain: Martin Chamberlain. I'm corporate counsel with Alberta Health and Wellness.

[The following members introduced themselves: Mr. Agnihotri, Dr. Brown, Ms DeLong, Mr. Elsalhy, Mr. Groeneveld, Mr. Liepert, Mr. Lindsay, Mr. Lukaszuk, Mr. Mitzel, Dr. Morton, Mr. Prins, and Mr. Rodney]

Ms Marston: Good morning. Florence Marston, assistant to the committee.

Ms Dean: Shannon Dean, Senior Parliamentary Counsel.

Mrs. Jablonski: Mary Anne Jablonski, Red Deer-North and sponsor of the bill.

The Chair: Before we hear from the petitioners, I'll just briefly review the procedures this morning. The petitioners will be familiar with the document Petitioner's Guide to Private Bills Procedure and the role of this committee in the process. This morning we'll ask the petitioners to make a brief presentation about the reasons for requesting the private bill and also the reasons why it can't be done through public legislation. That will be followed by an opportunity for the members of the committee to question the petitioners relating to the content of the bill and the reasons for the bill.

I'll remind the petitioners that the role of this committee is only to make recommendations to the Legislature on whether the bill should proceed as it was originally presented at first reading, whether it should proceed with amendments, or whether it should not proceed. There will be no decisions made today by the committee. We will meet again on May 2 to deliberate on the bill. It won't be necessary for the petitioners to appear at that meeting. You will be notified of the decision promptly after May 2, when we meet. If the committee recommends that the bill proceed, then it will be returned to the Legislature, and it will then proceed with the sponsorship of the MLA, in this case Mrs. Jablonski, taking it through the normal stages of passage of the bill.

Ms Mrazek: Mr. Chairman and members of the committee, Senior Parliamentary Counsel Shannon Dean, and Martin Chamberlain from Alberta Health and Wellness: before making remarks regarding Bill Pr. 2, the Mary Immaculate Hospital of Mundare Act, I would like to say just a few brief comments about a couple of individuals who are here with me today, namely Sister Stefaniuk and Tom Wispinski.

Sister Eugenia Stefaniuk is a member, as she's indicated, of the congregation of Sisters Servants of Mary Immaculate. She's actually been a member for 49 years. The sisters at one time owned and operated two hospitals in and around Mundare. One was the Mary Immaculate hospital in Willingdon, which was closed a few years ago. The other hospital is the Mary Immaculate hospital in the county of Lamont, which the sisters owned and operated until January 18 of this year. If you go there, it's just on the border of the town of Mundare. This hospital is the one that is operated by the Mary Immaculate hospital of Mundare corporation, who is the petitioner for this bill.

Sister Eugenia was at the Mary Immaculate hospital for approximately 25 years. For 24 of those years she was on the board of directors, appointed by the sisters, who were the members of that corporation until 2006. She has also served as the chair of the board of that corporation so is very familiar with that corporation and the operation of the hospital. As well, she was also the executive director of Mary Immaculate hospital for approximately 20 years, having resigned just in the past year. Sister has recently been appointed by the Alberta Catholic Health Corporation as a director of the Mary Immaculate hospital in Mundare on the withdrawal of the sisters. So she remains as a director for that hospital, now with the ACHC, or the Alberta Catholic Health Corporation, being a member. She, as you can tell, has continued her interest in the well-being of the hospital and, more importantly, the patients and residents. As a matter of fact, I called her the other morning, and where did I find her? Visiting other residents. So we're so fortunate to still have Sister's interest in that community.

9:00

Tom Wispinski, who is sitting at the end of the table, is the chair of the Alberta Catholic Health Corporation, or ACHC, as it's commonly known. He's also chair of the members of Mary Immaculate hospital by virtue of being on the ACHC because it is the sole voting member of that corporation. Tom was a director of the ACHC before becoming chair, and he recently retired as director of provincial initiatives of the Alberta Alcohol and Drug Abuse Commission after having served over 30 years with AADAC. Now I think that we're able to fill his time, at least most of it, I think, Tom.

I'd like to just at this time to take a few brief moments to say something about Catholic health care in Alberta and the present role of the Alberta Catholic Health Corporation because I think it will explain some of the background for Bill Pr. 2 and why we are here. Catholic health care has a long and important tradition in Alberta. In fact, the very first hospitals in this province were institutions organized and operated by the Congregation of Catholic Sisters. Indeed, this tradition continues today with the number of voluntary hospitals throughout the province continuing to play a vital role in the delivery of health care services.

Over time membership in the religious congregations has declined, and it became increasingly difficult for these congregations to sustain their operation of the hospitals on their own. Certainly, during this time there were many of the Catholic hospitals operated by the congregations of sisters that had to close because of their declining numbers. Consequently, in 1976 the Alberta Catholic Health Corporation, then known as the Alberta Catholic Hospitals Foundation, a nonprofit corporation here in Alberta, was established to assume sponsorship of the institutions where congregations felt that they no longer could continue the operation of the hospitals.

As congregations determined that they couldn't manage, the ACHC basically stepped into the shoes of the sisters. As a matter of fact, at one time before I was in law, I was at the Misericordia hospital. Actually, it was one of the first hospitals that came under the ACHC sponsorship. So very familiar from another aspect of the ACHC and what it has done for Catholic health care in Alberta.

The membership of the ACHC is comprised of the Catholic Bishops of Alberta, who in turn appoint a board of directors with representatives from across the province of Alberta who oversee all the operations of these various facilities. The ACHC currently is sponsor for 14 facilities across Alberta, with one further facility, the Bonnyville health care centre, in the process of being transferred to the ACHC in the next couple of weeks.

Some of the facilities you will be very familiar with. In the city of Edmonton we have the Grey Nuns community hospital, and we have the Misericordia community hospital, both operated by the Caritas Health Group, and that's an ACHC-affiliated hospital, St. Mary's hospital in Camrose, Mineral Springs hospital in Banff, and St. Michael's Health Centre in Lethbridge. I have a map that I'll just leave behind, but you can see that we have facilities right across the province of Alberta, and you can see the regional authorities and where they are located.

Now, what the ACHC determined was that rather than it operating each and every facility on its own, a much better model has proven to be a model where each hospital or in some cases more than one

hospital is operated by a separate but related corporation with its own local board of directors. That's really what the ACHC wanted, that the hospitals would be operated by people in the community as their directors. In many cases these corporations are already in existence, and instead of incorporating new corporations, it has been more efficient both economically and administratively to keep these existing corporations in place. One of these corporations is the Mary Immaculate hospital in Mundare. It was created under An Act to Incorporate Mary Immaculate Hospital of Mundare, and it has been utilized to continue the operation of Mary Immaculate hospital.

Now, Tom as chair of the ACHC and also chair of the members of the various ACHC-related corporations by virtue of his position carries out his duties as a volunteer. He has no remuneration for the service he provides. This is the case for all the members and directors of the ACHC facilities. They're all volunteers who carry out their duties.

Now to briefly discuss the Mary Immaculate Hospital of Mundare Act. The Mary Immaculate Hospital of Mundare corporation has a petition to have the present act, An Act to Incorporate the Mary Immaculate Hospital of Mundare, repealed and replaced with Bill Pr. 2. We had thought about amendments, but actually it becomes sort of difficult to manage later on because you have two pieces of legislation, one with parts of it and others. So after discussion with the Parliamentary Counsel, Shannon Dean, we have gone for the repeal of the act and replacement.

As the Sisters Servants of Mary Immaculate withdrew from the ownership and operation of the Mary Immaculate hospital in January of this year, it was obviously necessary for them to resign as members of the Mary Immaculate Hospital of Mundare corporation. That they did. They appointed in their stead the Alberta Catholic Health Corporation. Now, this has been sufficient on an interim basis, and the Mary Immaculate Hospital of Mundare corporation with its new members and new board of directors is continuing at present to operate the Mary Immaculate hospital as a Catholic health facility in Alberta.

However, the wording of the particular statute that governs this corporation is technically problematic and is undesirable on a long-term basis, which is the reason we're here today. In particular, section 9(2) of the current act requires a provincial superior of the Sisters Servants of Mary Immaculate, who resides in Toronto, to approve all bylaws of that corporation. The sisters, no longer being members and not wanting further involvement or responsibility or any possible liability arising from that membership, clearly do not want to retain the role of approving or consenting to bylaws, and of course from the company's perspective it simply makes more sense to have the existing members of the ACHC as the ones involved in determining how that facility and corporation should best be managed. Because of this provision in particular, consequently, the sisters had the ACHC undertake, as part of the transfer of that facility, to use its best efforts to amend its legislation at the first opportunity it could to make the amendments necessary to the act. This point is the first point in the petition that you have before you from Thomas Wispinski relating to Bill Pr. 2.

On reviewing the legislation, it was also determined that with the opening of the legislation to make this amendment, other amendments should be made to modernize the statute. It is a statute of 1962, and there is a need for other changes. Certainly, with the sisters' departure we should make it clear that they've departed and eliminate all reference to them; also, confirm that the ACHC is the sole member – I mean, that's what's happening – and generally make the legislation more applicable to the corporation's existing and future operation needs.

In preparing the legislation provisions that had been incorporated into the bill before you, we actually went to acts that have been adopted by the Legislative Assembly, and what we utilized for the provisions was not unique. They come from the Misericordia Hospital Amendment Act, an act passed by the Legislative Assembly in 1989, and the Caritas Health Group Act, which was passed in 1992. Really, we wanted some consistency between legislation of all ACHC facilities and related corporations.

We understand this morning that Alberta Health and Wellness will be speaking to two of the provisions in the legislation before you, Pr. 2. Both of those provisions are currently in the amended Misericordia Hospital Act and also in the Caritas Health Group Act. We'll speak further to those provisions following the presentation by legal counsel for Alberta Health and Wellness, Martin Chamberlain.

Now, the unique provisions that were in An Act to Incorporate Mary Immaculate Hospital of Mundare have been retained if they're applicable. There's one about accounting that was left in. Like, where there were unique ones that weren't covered in the other two acts, we left those in. We haven't had a problem. There is no problem, and we'll leave them there. That's what's happened.

Proposed amendments, in addition to removing the necessity of the provincial superior of the sisters to consent to bylaws, also provide for ACHC to be the sole member or, also, if they want other membership structures, to be able to do that in the legislation because we're looking at the future and what might happen. We've also broadened the objects to allow the corporation a broader scope in what it can do in the delivery of health care and wellness services and charitable works.

I don't know about yourselves, but certainly with myself having been involved for a very long time in health care services more directly initially – my last position was vice-president of patient care services – things have changed regarding health services over the years, and we do need to amend legislation so it can be applicable today and in the future.

9:10

Also, it provides for the corporation the capacity, rights, powers, and privileges of a natural person, which is, again, in the other two pieces of legislation I mentioned. Such a provision is particularly important with the borrowing of monies and similar activities. It also provides for the appointment of members and directors consistent with the ACHC structure, which is, again, in the other legislation, and the adoption and amendment of bylaws and what happens to the corporation if it's dissolved.

As I indicated, almost all of the provisions are in either the Caritas Health Group Act or the amended Misericordia Hospital Act. Over the years, since certainly 1989 and 1992, those two corporations have acted within those provisions, and it has worked well. So the ACHC saw no need to make changes to those provisions given that it's an ACHC-sponsored corporation.

We have indicated to Shannon Dean, Senior Parliamentary Counsel, that in due course petitions will be made to the Legislature for other ACHC-related corporations who also have private bills to have similar provisions that we're asking for in Pr. 2. That way all the ACHC facilities can be operated under similar legislative provisions. We're not saying when we're coming back. We'll do that when the need arises, but I think you'll be seeing again the ACHC appearing before you to have changes made to that legislation.

Those are all the comments I have, Mr. Chairman. Sister Stefaniuk, Tom Wispinski, Rick Ewasiuk, and myself are prepared to respond to any questions of the committee, as you indicated, regarding Bill Pr. 2 or any other questions you may wish to ask of us.

The Chair: Thank you.

Questions? Mr. Chamberlain, I believe you have some questions.

Mr. Chamberlain: Thank you. Mr. Chair, Marg, Sister, hon. members: Alberta Health and Wellness doesn't have any principle objection with the bill proceeding. We just had two concerns with respect to specific clauses in there. Ms Mrazek is correct: they are in previous legislation. However, that was a number of years ago. We've looked at them again and have some concerns. The first is with respect to section 3(2) of the bill:

> The corporation shall not be restricted to conducting its activities within the Province of Alberta, but is hereby empowered to conduct such activities as its members and directors consider in their opinion incidental, beneficial or conducive to the corporation's objects outside of the Province and outside of Canada.

We consulted with constitutional law in Justice, Mr. Chair, and have significant concerns about whether or not this bill is in fact constitutionally valid. It purports to have extraprovincial effect, which we believe may be beyond the authority of the Legislature. So Alberta Health and Wellness would prefer that that clause be struck from the bill.

The second clause which is a concern is with respect to section 9, the liability provision. The language in this clause is similar to other corporate statutes. The Business Corporations Act, for instance, has a similar clause that waives liability with respect to shareholders of the corporation. This one goes further in that it purports to waive liability for defaults of the corporation, for "members, directors or officers." Alberta Health and Wellness has some concerns about relieving directors and officers of liability because the directors and officers are the controlling mind of the corporation. From a governance and from a health system accountability perspective, notwithstanding that they may be volunteers – and I respect their contribution – they are still responsible for a multimillion dollar corporation on which lives and employees depend. We would expect that they would be held accountable. If the corporation chooses to indemnify them, provide directors and officers with insurance, they could do so.

Those are our concerns, Mr. Chair.

The Chair: Thank you, Mr. Chamberlain.

Any comments or questions from committee members?

I have one question. I guess my first question would be: why as a charitable institution is it necessary to proceed under private legislation rather than the usual public legislation?

Ms Mrazek: All I know is that we've had a private act, and all we're seeking to do is amend it. I don't think it can be public legislation because it is . . .

The Chair: With respect, you've asked to repeal it. You're not amending it; you're repealing it. So my question is: given the fact that you're repealing it, why proceed under private legislation, which is generally restricted to an exception to the public law? What is the mischief which is being sought by seeking this private remedy? Is there something that you cannot do under public legislation that you wish to do in this act? I guess that's my question.

Mr. Ewasiuk: Mr. Chairman, if I might speak to that. I think the answer to that is that it's really just a matter of convenience that we're repealing the other act and putting another one in. Originally this was drafted as an amendment to an existing private statute. The breadth of the amendments were such that it appeared to us and to Legislative Counsel as well that it made more sense just to frame this as a new act rather than structure it as an amendment to the old act. Part of this act does of course repeal the existing act, which in effect is a type of amendment, a severe amendment, but originally it was in fact structured as an amendment.

Ms DeLong: I'm sorry; I'm not all that familiar with your organization. I wonder whether you could explain a little bit more about how the Catholic hospitals work with the regions, whether they're part of the regions or whether they're separate from the regions.

Mr. Wispinski: Yes, our facilities are part of the region. We have agreements with the regions to provide the services, so we're held accountable to the regions because that's where we get our funding basically. What has happened and what is continuing to happen is that the regions are forming other kinds of partnerships with our facilities, asking them to provide different services or alter their services or extend services. So we're very much part of the regional structure.

Ms DeLong: Thanks very much.

Mr. Liepert: I'd just like to hear from the presenters rationale, besides consistency with existing acts, as to the two concerns that Alberta Health and Wellness has. If we were to accept Alberta Health and Wellness recommendations and amend the legislation along those lines, what impact would that have on the operations?

Ms Mrazek: Mr. Chairman and to you Mr. Liepert, I would like to comment, firstly, on section 3(2), that has been referred to, that in fact if the constitutional lawyers are saying that it's not a valid provision in any extent, we would be prepared to work with Parliamentary Counsel to amend that legislation to delete that provision. Certainly, that was not an issue that was raised in the other two and for whatever reason has been there and hasn't been a problem. But, like I say, if it's being challenged, being reviewed, we are prepared to withdraw that one provision. I'll let Rick speak to section 9 as we do have some concerns with that one.

Mr. Ewasiuk: Let's just touch on 3(2) again. The reason for that is a very old historical reason in corporate law, and frankly we don't need it anymore. So it won't be an issue. We can work with Parliamentary Counsel to remove that section.

Section 9 is a bigger concern for us. As has been pointed out – but I'll remind you again – that section is already in existing legislation in the Caritas act and the Misericordia act. We modelled this current statute after that for the very reason that we wanted to avoid any controversy. These sections already exist in two other cases, so we certainly didn't view them as controversial, nor do we think they should be particularly controversial now. In terms of the logic behind that section 9, let me look at it from two perspectives, first, in terms of what the section actually says and, secondly, in terms of the kind of organization we're talking about.

First of all, what the section says is that members and directors and officers will not be liable for the acts of the corporation. It doesn't say that they won't be liable for their own acts. It doesn't say that they won't be liable for their own negligence. It doesn't say that they won't be liable for their breaches of duty of good faith to the corporation. It doesn't say that they won't be liable for their breach of duty of good care. It simply says that they won't be liable for acts and defaults of the corporation. The theory behind that is, in other words, that they will not simply because they are directors

be automatically liable for something that the corporation does and something they may have no personal involvement with whatsoever.

9:20

Let's look at the kind of an organization we're talking about. We're talking about a hospital, a voluntary hospital, which relies very heavily on volunteers. These volunteers do not receive remuneration. They are there because they are motivated people and, hopefully, because they are very talented people. We need talented people. We need motivated people on the boards of these organizations. We need people who need to make hard decisions and difficult decisions without having to look over their shoulders. We need people to be able to make decisions that are based solely upon what is best for the public and what is best for the organization. This section, we believe, only stands to improve that ability.

It is very important, I think, when you're acting on a board and particularly when we're inviting people onto the board, to know that you can act, and so long as you are acting properly, so long as you are acting in good faith, you have nothing to fear. If you act badly, then you should be fearful.

The Chair: Well, Mr. Ewasiuk, with respect I think you would concede that the standards of duty and care under our existing legislation, our public legislation – that's the Business Corporations Act – do not provide automatic liability for directors in the case of corporate liability. What they do is provide that due diligence must be taken. Are you suggesting that these directors and officers would not be subject to the responsibility to have due diligence in carrying out their duties?

Mr. Ewasiuk: Well, again, it depends. There are numerous ways that directors can become liable. Sometimes it's through lack of due diligence; sometimes it could be more or less automatic. We have environmental statutes which can make directors liable. We have situations where directors can be liable for nonpayment of GST, nonremittance of CPP and EI to the federal government, situations where they can be liable for nonpayment of salaries. Our concern is that if you start drawing volunteers into an organization like a hospital and you say, "Here's this wonderful organization. We want you to do these things, spend a lot of your free time doing this, exert your talents in the best interest of your community. But, by the way, if for any reason the employees don't get paid, you're going to lose your house," our feeling on that, particularly in the context of a hospital, and why we think this was probably not an issue in the last two acts that were passed before is that that seems to be a perfectly sensible approach to take. Again, I want to remind you that nothing in here says that they're not liable for their own acts.

The Chair: Mr. Lindsay.

Mr. Lindsay: Thank you, Chair. I guess the question I have is: if the members, directors, and officers aren't liable for the acts of the corporation, then who would that fall to?

Mr. Ewasiuk: Well, the corporation itself, of course, would be liable. It would continue to be the case that they're liable. They're liable for salaries, and they're liable for whatever else they might be liable for. The only thing we are concerned about is saying to a director: whether you had anything to do with it or not, you're automatically liable.

The Chair: Further questions? Mr. Rodney.

Mr. Rodney: The questions I had since I've raised my hand have been answered by both counsel. Thank you.

Ms Dean: I just had a question with respect to the provisions dealing with the board of directors. I know that in the Misericordia hospital legislation that you referred to, there is a qualification in there on directors' powers – it's 11.1(3)– dealing with expenditures out of an equity trust fund. I just flagged this because I'm not sure if this has any relevance to your corporate entity or the hospital. Perhaps you can elaborate as to why there is no need to put any qualifications on the powers of the boards of directors in your private act.

Mr. Ewasiuk: Are you referring to the section before that dealt with expenditures out of the equity?

Ms Dean: Yeah.

Ms Mrazek: That isn't necessary because that fund isn't there.

Mr. Ewasiuk: Yeah. It's long since gone. That was done at a time when we had what was termed as equity on all these voluntary hospital organizations, and it has since gone.

The Chair: Any further questions?

With that, I'll thank you for your presentation this morning. Following our deliberations on May 2, we will be in touch to advise you of our decision.

Ms Mrazek: Thank you.

Mr. Ewasiuk: Thank you very much.

The Chair: Is there any further business to come before the committee this morning?

Can I have a motion to adjourn? Mr. Mitzel. All in favour? Any opposed? That's carried.

[The committee adjourned at 9:26 a.m.]