Legislative Assembly of Alberta

Title: Monday, April 22, 1996 8:00 p.m.
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[The Deputy Speaker in the Chair]

THE DEPUTY SPEAKER: Please be seated.

head: **Government Bills and Orders**
head: Second Reading

Bill 35
Personal Directives Act

[Adjourned debate April 22: Mr. Sapers]

THE DEPUTY SPEAKER: The hon. Member for Calgary-Buffalo.

MR. DICKSON: Thanks very much, Mr. Speaker. I wanted to raise in second reading debate on Bill 35 a number of issues and questions I've got. I want to start off by saying that I thought my position had been clear on this Bill, but I had an interesting meeting, in fact shared with my colleague from Calgary-North West. We had a presentation made to us by a group in Calgary that raised some excellent questions with respect to this whole business of advance directives, some questions, I confess, I didn't have ready answers for. So I want to share some of those questions with the Assembly.

I'd go back and say that I remember being very impressed when I read the Alberta Law Reform Institute report which talked about this some time back, and I put myself in that category of people who thought that the March 1993 report of the Alberta Law Reform Institute made good sense and should in fact become part of that regime of law in this province. The kinds of concerns I've got, I think, don't go to the point of suggesting a negative vote on Bill 35, but there are questions I'd like some clarification on and some explanation. I'd like to ensure that we have a full debate on some of these issues before we leave Bill 35 and consider carefully whether amendment is warranted.

The concerns that were raised with me relate very much around the question of revocation, and I think the concern might be put on this basis, Mr. Speaker. At least with a will, when you do it, you typically only have to worry about capacity at one point, and that's at the time you make the will. Then it's put in your safety deposit box, and nobody really worries about the testamentary instrument until the time of your demise, and then it's somebody else's problem thankfully. Occasionally you get wills revoked, but most often in my experience it's revocation through a subsequent will being made.

Now, the concern of course with one of these personal directives is that once you've made it, it sits there, and in effect what you've done is you've made a commitment as an individual to a particular health care strategy, a particular kind of support. The question that was posed to me was: what happens in these two cases? Firstly, the state of medical technology progresses to a point where something that was formerly seen as debilitating and incurable, if you will, now is something that can be arrested and perhaps cured or mitigated to a huge extent. Then the companion issue, Mr. Speaker, would be: what happens if after you make the personal directive, you undergo a change and you decide that you want something different done and a different kind of health care and maybe a more aggressive kind of health care service than you had before?

So one may say: what's the big deal? There's no big issue; you can simply revoke your personal directive if you change your mind. But this is where the other problem ties in here, the other problem being that you can have a kind of an episodic capacity or incapacity. It's not uncommon. I can think of many cases where you would go to take instructions for a will from somebody in a nursing home, and you'd want to get a doctor's advice, a physician's advice that this person had testamentary capacity. What you'd find, you might well be told: "Well, today this person has testamentary capacity. Tomorrow or last week they won't or didn't have that kind of capacity."

I guess the scenario that was posed to me and my colleague had been in the situation where you have a particular kind of affliction that leaves you with capacity at some time and incapacity at others. You're in a situation where you've made this commitment that a certain kind of medical treatment is going to be administered or perhaps indeed withheld from you, and you want to change your mind, but you're in one of these situations where on some occasions you're incapable under the revocation provision which is set out. Actually there are a couple of different sections. It starts off when we talk about the revocation in section 8, and then there are some further obligations on a service provider to check this issue, sections 20 and 21. In fact sections 20 and 21 appear to address the fact that you may have episodic incapacity because they impose a positive obligation on the service provider to "make a reasonable effort to determine if the maker continues to lack capacity," and then similarly the provision dealing with the duty to "notify the agent" in section 21.

The concern would be: how do we deal with that kind of a situation? Have we created a kind of trap that once you get into it by making a personal directive, you then have a great deal of difficulty getting out of the trap, you have real problems in terms of trying to revoke this process you've started? Now, this has probably been considered by the proponent of the Bill, the Member for Three Hills-Airdrie, but I'm interested in that question being addressed.

Now, the other issue I think is that there has always been much issue in terms of providing relatives and setting out in effect almost like a whole degree of consanguinity the list of people who would have the ability to make decisions in the capacity of a nearest relative. I know that Bill 35 has eliminated that whole second tier of agents, if you will, and I know that that's generally regarded as positive. I guess I'm wondering: is that because as a consequence of Bill 28 – I ask this in respect of the Dependent Adults Amendment Act, 1996. Both these Bills came out of a hopper at approximately the same time. I know there were some linkages between the department staff working on the two Bills, 35 and 28. I'm hoping for an express acknowledgement or disclaimer that there was some linkage and that the reason the list of people who could act as agent and the default provision were eliminated and the list was shortened – was that because, Mr. Speaker, Bill 28 now provides an expedited means to appoint a guardian? It's now possible to appoint a guardian in an emergency situation, and it can be done very quickly, very expeditiously. I think that probably is much to be preferred to having the second tier included in Bill 35, but I wish the mover would address it, because I didn't see that in the introductory comments.

8:10

Further then, Mr. Speaker, the concern is the age of consent. Now, I know that the Alberta Law Reform Institute had recommended an age of 16 rather than the age of majority, age 18. This would be in section 3. It seems to me that there were

some compelling arguments made by the Law Reform Institute in their report to go with a threshold age of 16. I'm still not persuaded in spite of everything that I've heard by proponents of Bill 35 that 18 is a more logical or a more appropriate threshold than 16. I suppose I can see arguments on both sides, but it seems to me in this area of choice – and you might even style it as self-determination – I'd see a strong argument that can be advanced that 16 should be the operative age.

The other provision I suppose is a situation where if your spouse is appointed as an agent under the terms of Bill 35, part 3 and then you subsequently undergo a divorce, one would think that the other side of divorce you might have some very different views in terms of who is going to be making what may be a life-and-death decision, Mr. Speaker. I've been involved in acting in enough divorce actions that I can imagine some people wielding this power with considerable relish and gusto. I'm not sure that that would have been what was within the contemplation of the maker. I guess we don't call him testator; I guess we're calling him a maker here. I think there are two other provinces – I know Manitoba for sure, and I think there's a second province – that provide that in the event of a divorce, if it's the spouse who was nominated as agent, then that's revoked or lapses. I think that initiative in Manitoba has much to commend it to members when we're dealing with Bill 35.

The other concern that I raise when I look through the Bill is the provision for regulations in section 32. I'll raise the now well-worn observation and request that there should be a commitment that amendments to any statute should be referred to the Standing Committee on Law and Regulations. What kinds of regulations would be more important and more powerfully call out for some kind of careful scrutiny than regulations that are going to govern and regulate and monitor what truly may be life-and-death kinds of decisions? We're not talking about regulating fuel prices. We're not talking about regulating elevator inspections. We're talking here about subordinate lawmaking that sets out the circumstances by which somebody can in effect refuse, deny, or terminate some kind of a life-saving health condition.

If ever there were a Bill that called out for some special safeguards in terms of what those regulations are, how comprehensive they may be, how narrow they may be, what the processes are, particularly in terms of forms of revocation, surely this would make the case, this would be the Bill, and the subject matter of this Bill would be important enough to warrant that kind of special treatment.

I'd want to, I think, observe in the strongest possible terms that this subject matter is too important to be left to secret lawmaking. It's too important to be left to bureaucrats and administrators and faceless, anonymous gnomes in a department drafting these kinds of regulations. It should be the subject of some kind of all-party scrutiny, and maybe this mover, maybe the Member for Three Hills-Airdrie, will be the member who would come forward and say, "Given the unique circumstances and the life-and-death context in which Bill 35 frames decisions, these regulations should be accorded that kind of special treatment, that kind of careful, thorough analysis."

There's a kind of staleness or datedness that's set into this process. In Bill 35 the agent's obligation tends to be sort of a retrospective one. It's a question of the agent looking back and ensuring that directions are followed if they are clear but only if they're relevant to the personal decision to be made. There's a question in terms of – this is something I raised at the beginning – medical science, medical technology overtaking our expectations, overtaking our assumptions, and I wish I had an answer, Mr. Speaker. I find myself trying to devise a system, a safeguard that addresses the concern I raise, that still allows an advance directive to be made but provides an adequate degree of comfort. Maybe it's an imperfect instrument and always will be to deal with a uniquely personal, powerful, critical decision, and maybe my angst or my frustration is just because it is that imprecise and it is that awkward, but I raise the concern.

I guess all I could ask members and the mover, before we finally determine our position on Bill 35, is that each of us, certainly both sides of the House, has given the very best consideration and the most careful consideration that we're capable in terms of trying to find the sort of balance and to find this kind of elusive equilibrium between respecting the sanctity of human life yet recognizing and wanting to enable that sense of self-direction, that sense of self-determination. It's something that gives me some concern.

I want to compliment the government overall because I think the Bill strikes me as being quite comprehensive. The one thing that it could deal with, I think, that would make the Bill somewhat more comprehensive would be out-of-province directives. Alberta, certainly the city I'm from, sees an enormous number of people who were born and lived in other parts of Canada or indeed other countries and then have moved to Calgary, moved to Alberta. We have a lot of mobility in this country, and it would seem to me that it would be important to address that business of out-of-province directives in some fashion. You know, we've been able to do that for wills. We've been able to deal with equally solemn, equally important kinds of testamentary documents. Surely we're smart enough as a province that we could also devise a way . . .

Mr. Speaker, I'm out of time, so I'll have to wait for committee stage. Thanks very much.

8:20

THE DEPUTY SPEAKER: Okay. The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Speaker. There is not an adult person alive today reaching the age of many Members of this Legislative Assembly, the more youthful Members of the Legislative Assembly, including yourself, Mr. Speaker, that has not from time to time engaged in the very tragic and very pensive self-debate that asks the question: what if? What if you lose the ability to reason and the ability to speak and you are being kept alive on a life-support system? What if you want to live in your home and you indicate to your loved ones that you want in all respects and at the greatest possible effort to be left to live in your home as long as you can or that medicine be withheld if appropriate? There is none in this room that has not heard those debates, engaged in those debates, or perhaps witnessed those debates. To the extent that the hon. Member for Three Hills-Airdrie seeks to bring forward in Bill 35 an opportunity for people to assist in the troubling questions that arise when somebody is put into that position, she should be commended.

When I review this Bill and I stand up to speak to this Bill, I have a pensiveness about the Bill that is very difficult, Mr. Speaker, to articulate. It is almost, if you've ever had the experience – and perhaps some Members in this Legislative Assembly have had the experience. You walk into your house and you know that something's amiss but you don't know what, and if somebody phoned right then and said, "What's wrong in

your house?" you would not be able to articulate it, but you know fundamentally that something is wrong. So in my comments to this Bill today I'm going to play some of the what-if games and pick up where the hon. member began when she introduced her Bill, that generated some good-natured eyebrow-raising, at least from those Members of this Legislative Assembly that are also members of the legal community.

The hon. member said that this Bill, she hoped, would provide for a simple mechanism where people could make directives that would not require a lawyer. I think that was her concern, that there be unleashed on the land a simple, straightforward procedure where people can provide some guidance that would kick in when they had lost their ability to make those reasoned discussions.

On reading this Bill, hon. member, I say to you with the greatest of sincerity that this Bill will not reduce the amount of litigation and the number of involvements of the legal community. It will in fact, by definition, increase them manyfold, because it is very clear that this Bill, with its many combinations and permutations of events and what can happen if you go astray of this Bill, will be very, very concerning to people who act as agents, to people who act as guardians of dependent adults, and to people who provide services as contemplated and required in the Bill. I think you will find that it will be quite likely, hon. member, that unless one of these directives is documented, executed by a lawyer, notarized, stamped, sealed, wrapped in ribbon, it is highly unlikely that health care providers and agents will carry on the awesome task that is given to them.

From that jump-off point, if I might, Madam Member, sponsor of the Bill, I want the members to take a look at section 28 for me to make this point in this Bill. Now, section 28 purports to say that you will not be disinherited from an estate if you act as a personal agent, but let's look at section 28 very carefully. Section 28 says that "if an agent has acted in good faith," they will not be disinherited from their gift simply because they have been a personal representative. That, as anybody will tell you that has ever been involved in fighting families following the death of a loved one, is opening the barn door wide and also taking a moment to remove all of the supporting timbers around the barn, because all you would have to do now is allege that the agent did not act in good faith, perhaps breached some of this Bill, perhaps didn't act in good faith, perhaps accelerated the death of a loved one by instructing the withholding of essential medicine. I would suggest that you would have an argument on your hands such that many agents would decline to accept an appointment if they ran the risk of being disinherited out of their estate inheritance.

This is also a fundamental amendment to the Insurance Act. Under the Insurance Act of Alberta there is a designated beneficiary provision that cannot be changed other than by the person who is the owner of the policy. If this particular piece of legislation passes unaltered and unamended, you run the risk that you will have in effect amended the Insurance Act of the province of Alberta, because now a designated beneficiary will have to prove, in addition to proving that he is the designated beneficiary and that the life upon which the insurance was placed has ceased, that they were not an agent or if they were an agent they did not act in bad faith, which is the flip side of this.

I could see insurance companies being extremely concerned about paying out in the face of one of these directives. That's not intended to be a criticism of the concept of being able to set out your course of treatment, but it does put tremendous pressure on the shoulders of those people who serve as agents if the fact that they act as an agent in bad faith on some trivial item, they become disinherited to a life insurance policy.

Likewise under the Intestate Succession Act you could have the complete disentitlement of a parent, child, or loved one simply because of the allegation that they have not acted in good faith. That allegation is easy to make, and although the maker theoretically has to prove it, there's nothing in this particular piece of legislation that says what the onus of proof shall be.

On that one point alone I say to you, madam sponsor of this Bill, if you intended to make this a Bill to restrict and reduce the amount of work for lawyers, with great objectives and laudable objectives you have looked for your answers in all of the wrong places.

Likewise, under the Family Relief Act you could have the disentitlement of somebody who is genuinely in need. A spouse, for example, who is not able to support herself must look to the Family Relief Act for assistance following the death of an individual, and this particular issue raises and puts that into some concern.

So it would seem to me that most members of the legal community – if you were approached by an agent and the agent told you that that agent was a designated life insurance beneficiary and stood to inherit $300,000 of a life insurance policy and the personal directive that was sought to be introduced was a directive not to advance health care or not to embark on herculean efforts to keep somebody alive in the face of an inevitable outcome, you might well advise them and would have to advise them not to accept that agency, not to put themselves in jeopardy on that issue. This particular section, it seems to me, strikes out aggressively against would-be Good Samaritans and people who want to provide assistance, and I would ask the hon. member to look at that.

Now, I also want to direct the Legislative Assembly's attention to section 31 of this particular Bill. I think I understand the motive behind section 31. I hope the member, when she responds to the debate in second reading, will explain why section 31 is there. What I think it says is that you can't personally direct yourself into some kind of a long-term housing arrangement, like somebody says, "We will let you live in our Sunny Acres Nursing Home if you sign a personal directive in our favour." I think that is what it says, and I think it therefore seeks to impose a penalty of $10,000. It may be that what it should also do is provide the civil remedy of repudiation of the personal directive. If the intention is to prevent somebody from using their position as an agent to ensure accommodation contractual relationships, then what about the flip side of that coin; rather than the punishment of the fine, having the ability to repudiate that particular section?

Then I think of all the other things that you could get astray in. Why don't we protect people against therapies, pharmacological therapies that fall within the definition of quackery? Why don't we protect people from signing personal directives that oblige them to go to Mexico to take a treatment of chicken bones to solve abdominal cancer or any of the other favourite scams that prey upon people's most vulnerable emotions at one of the most vulnerable times of their life? Why don't we seek to protect some of the other types of abusive contract situations? Why this one, and why only this one? Is it in fact the case that you concluded that would be the most obvious area for abuse? Or is it perhaps more difficult, the issue that the other matters haven't been thought of and haven't been fully addressed?

8:30

Dealing with the courts, many people elect to live in rural Alberta, and there is provision to go to the courts to referee any disputes relating to personal directives. I'm wondering why the

draftsman of the Bill did not consider the valuable and good work of the Provincial Court of Alberta, who are much wider spread across the province than the Court of Queen's Bench, who are primarily based and resident in the larger cities. It seems to me that it would be a good gesture and also good regional economy if the Provincial Court were asked if they could take on some of the workload from this particular Personal Directives Act. The other issue of course is: can the Queen's Bench handle what might be an anticipated workload that would flow from this type of legislation? You'll recall, Mr. Speaker, that I talked about the false hope that this would be a way that lawyers could be disassociated from the process and why I postulated that was not likely to occur.

Another example of the complexity of these things is found in section 8. Section 8 is a very interesting section and touches on the matter that the hon. Member for Calgary-Buffalo raised in his debate. I think he was having some difficulty articulating it, much the same as the analogy I raised about going into a house and feeling that something's amiss but not knowing what. Perhaps he might have some of these same concerns, and he expressed them. Section 8 allows for a grandfathering clause. You can put a grandfathering clause into that particular Bill where you can say that it's the incurrence of a date, that it's over. So what happens if somebody, while of sane mind, enters into one of these personal directives, sets out a course of action, and then that personal directive automatically grandfathers itself right in the middle of a prescribed treatment or program? What then happens, and what then is the risk for the agent? Does the agent say: "Well, I must carry on with this protocol because that is a protocol that existed yesterday, but because there has now been a grandfathering built into this personal directive, what do I do? Do I wash my hands of it and walk away?"

Those types of questions, particularly in light of the disinheritance provisions found in the Act, are extremely troubling. Actually, there are no disinheritance provisions in the Act, Mr. Speaker. It's an attempt to prevent a disinheritance, but it leaves open the loophole of leading inadvertently to a disinheritance if an allegation of bad faith occurs. So what happens if the personal directive ends on a time-sensitive date and the protocol that's set out therein is elected by the agent to continue without authority or the agent has forgotten that the authority was to lapse on a certain day? Then what risks do the supplier of service and the agent face?

You will recall, Mr. Speaker, that in this legislation the supplier of service and the agent are obliged to continuously inquire as to the capacity or lack of it. Are they now going to be obliged to inquire as to the time-lapsing of these particular directives? What I think will happen is that no supplier or no medical personnel will provide any treatment whatsoever in the face of one of these without wanting to run off and get a legal opinion as to the likelihood that they're going to be sued or not. So again what I suggest has happened here is that we have the potentiality to unleash a nightmare onto individuals with this Bill unless there is some further consultation and further review.

Now, it is the sad reality of life, Mr. Speaker, that on occasion families will fall into disarray and bickering among themselves. The hon. Member for Calgary-Buffalo acknowledged some experience he had in the area of divorce. I must tell you that there have been many members of the legal profession that have had experience with people fighting, and some other members say that they, too, have had personal experience in the area and realm of divorce. Other members say they have had personal experience with family fights following the death of a loved one, where the entire event turns into a grotesquerie of bickering and moral blame and squabbling over estate inheritances.

In the context of this particular legislation, this legislation is the dynamite, and all we are waiting for is unreasonable individuals to start playing with matches around the dynamite. So I would urge all Members of the Legislative Assembly to take a sober second thought about this particular legislation if it is to pass. Remember that many who read this legislation will read into this a movement down the slippery slope towards encouraging assisted euthanasia, encouraging the withholding of medical services, the withholding of food, the withholding of other necessities of life, and all by virtue of a written personal directive. What we will have, Mr. Speaker, are tremendous clashes of moral will, tremendous clashes of personality, and tremendous clashes of legal rhetoric if there are too many of these personal directives and if they become used in an indiscriminate sense.

So I will add my concerns to those that have already been expressed by other Members of this Legislative Assembly and take my place so that other speakers who are lining up and waiting to speak will now be able to speak to this Bill.

Thank you, Mr. Speaker.

THE DEPUTY SPEAKER: The hon. Member for Leduc.

MR. KIRKLAND: Thank you, Mr. Speaker. It's my pleasure to stand this evening and compliment the Member for Three Hills-Airdrie for bringing forth the Bill. I would suggest it's an excellent piece of legislation. Some of the legal minds here have indicated that there are some deficiencies, but then again from a practical viewpoint I can overlook those. I can accept the Bill as it's been presented, and I would indicate to the member that I will support the Bill.

As we look at the Bill, I think it's very comprehensive. The members for Calgary-Buffalo and Fort McMurray spoke of this. I see that the Bill enables a person to make a personal directive to appoint an agent to make decisions on their behalf. I also see that those particular directives can be revoked, so we have a safeguard and a filter on that aspect. That's desirable. I see that the Bill also has the ability to have a personal directive appoint a person or persons which will determine whether the maker has the required capacity, and I would suggest that's very desirable. It has a tendency to be a safeguard against those that may look to prey upon someone that is not of full health and sound mind. So the safeguards certainly seem to be in the Bill, Mr. Speaker, and I would compliment the member for its thoroughness.

Now, as I understand it and from my own personal experience, there really is no protection or promotion of individual autonomy or dignity or self-determination regarding health care decisions when someone becomes very ill. I see this as being a positive step where in fact a person can be appointed or assigned to assist with those particular decisions, and it would be very desirable in some instances I would suggest, Mr. Speaker.

I understand also that this is an evolutionary process and a continuation of an earlier initiative that was started some time ago. Although it would appear that only 15 percent of the population would actually use a living will, I would suspect that once it's actually in place and once there's more public knowledge of the ability to devise a living will, that number will increase. So from a practical viewpoint I support the Bill very wholeheartedly, and from personal experience and from the heart I would suggest, Mr. Speaker, that I would support the Bill very ardently.

8:40

Mr. Speaker, my best friend works in the health care field, and some of the occurrences she shares with me convince me that a

Bill such as this would save and prevent a tremendous amount of personal and emotional grief, not only to the poor souls that can no longer make their decisions about health care but also to the many providers of health care that are forced into situations to intervene. Too often she's been called on herself in administering medical care and action that is very invasive to bring a person back from the brink, I should say. In one example that I can recall, because of the assistance of the family there were six of these extremely invasive and traumatic procedures to preserve life. In fact, that was six interventions in a 72-hour period. Now, if that individual had had the benefit of a living will and the contents of that living will had been known, I would suggest that there'd be a tremendous amount of trauma and a tremendous amount of emotion saved, not only on behalf of the poor soul who was so ill but also the many caregivers who unfortunately were drawn into that particular situation to administer lifesaving care.

Mr. Speaker, from a personal viewpoint and something that's very close to me, I can share with you that on about June 1 of 1993 I sat at my father's bedside. At that particular point he shared with me that in fact his energy had been exhausted, his dignity had been removed, and he was working his wife of 52 years to death, so it was his choice, actually, to let his spirit go. Now, that wasn't a traumatic moment for me. I thought it was a sound decision-making process by a man who had been ill for approximately three months and certainly could not retain the pride that he once had. So having pushed my chair back from the bedside after that discussion, I understood fully.

In retrospect today, if that could have been transposed onto a legal document indicating that was his wish and he had decreed and defined exactly how he would like no intervention if things deteriorated, that would have been sound. Little did I know that within two weeks I would be called back to that particular residence they had lived in for so many years, only to enter that residence to find my father in a very stricken state lying on the floor with many medical people invasively attempting to bring him back from the brink. He had made a decision to move on to the next plane, and when one tries to intervene in those particular circumstances, it not only adds to the chaos, Mr. Speaker, but I can assure you that it's very traumatic to have to watch the invasive procedures of having somebody throw electrical paddles on your father in the middle of his living room to bring him back from a place that he had chosen to go.

Now, if that had all been decreed at that particular point, it might have been an easier situation for me to deal with. In fact, if I had had that option at that particular point as I sat by his bedside while he was still of sound mind, it would have been suggested and acted upon, because in fact he had made his decision very clear. He made his decision to follow his wife of 52 years, who had left him a couple of hours before that. I think that was an excellent decision, and it's very unfortunate that at that particular point it couldn't be stopped and let go as it was. Now, it has a happy ending, Mr. Speaker, because though in fact there was resuscitation, it was only for a short time to enable me to collect my brothers to stand by his bedside and see him off to that next plane.

In retrospect, I would like to have had the option at that particular point to have pulled out a piece of paper and said: "He's made his choice. Leave him alone. Let him go." I see that there are many people in this world that certainly would make a decision like that in light of the fact that perhaps their life is coming to a close. I think it's a very, very sound step, and I would again compliment the Member for Three Hills-Airdrie for bringing it forth. As I indicated, though perhaps only 15 percent of the population today have given due thought and consideration to a living will, Mr. Speaker, I would suggest that as each one in this House brings word that this has been a successful Bill and the option is there, you will see that 15 percent grow. I think it's a very sound decision in today's world. It only can be speculated as to how many millions of dollars we have spent bringing people back, keeping them alive under very, very expensive medical conditions within the country of Canada and the province that we live in today.

So, hon. Member for Three Hills-Airdrie, I compliment you, and you certainly have my support on this particular Bill.

THE DEPUTY SPEAKER: The hon. Member for Calgary-North West.

MR. BRUSEKER: Thank you, Mr. Speaker. I, too, want to add a few comments to Bill 35, the Personal Directives Act. I want to compliment the member for bringing the Bill forward, because this Bill attempts to deal with a very sensitive and very difficult issue for most people, but I guess I really have to wonder why we have this Bill before the Legislature today, particularly when I look at part 5, which deals with the whole section about court review.

If you look at that section, Mr. Speaker, basically what it says, as I read through it, is that anything that anybody does under this piece of legislation can still be referred to the courts for review, whether or not the agent is acting appropriately, whether the agent is acting within the authority of the agent, whether in fact the decision being proposed by an agent under the personal directive of the maker of that personal directive should even be proceeded with. So when you have that entire section in there, I guess it rather begs the question of what is the point of all the rest of it?

Indeed, when you review the rest of the Bill, it seems that if someone were to raise a concern – and that someone might be a family member, or it might be a second agent because the Act allows for the appointment of multiple agents. As I understand it, there's no upper limit, although from a practical standpoint I'm sure that any more than two would get to be virtually unworkable. There's no limit to the number of agents an individual can appoint. There's no limit to the number of personal directives a person can make, because you can make a first personal directive and then change your mind. As medical technology changes, as one's family situation changes, as one's personal health status changes, you can make a second, a third, and so on, personal directive. It seems to me that one could very quickly run into a bit of a boondoggle in terms of who is involved with the individual directly.

Now, there are a number of sections that deal with the issue. Part 4, service providers, deals with a continuing duty to consider capacity, a duty to notify the agent, a duty to verify in fact by the service provider who is the correct agent, and so on. It seems to me what is being proposed here in a sense is a very technical Bill. I think that, in a sense, what is missing, if you will, Mr. Speaker, is the humanity that is supposed to go behind what is probably a very difficult time for certainly the individual and the family members.

In fact as I read through the Bill, it almost seems to me – now maybe I've misinterpreted the Bill – that there's a direction, an attempt to cut family out of the creation of the personal directives, that the agent will be involved and that the service providers will be involved, but the spouse is mentioned only peripherally, and

it's usually in a prohibitive fashion rather than in an involvement fashion. Certainly there's no mention of extended family beyond that, whether it's brothers, sisters, children, et cetera, et cetera.

Now, of course not all individuals will find themselves in the same situation with respect to family. I appreciate that what is being attempted here is to create a Bill that would serve all people in all situations at all times. In trying to create such a Bill, I think that something has been lost along the way. I appreciate that the intent has been to try to, if you will, objectify the process of one's last years or months or days or, I suppose, perhaps even hours in some situations.

I think the intention of the Bill is good, but the lack of the mention of family in there raises some concerns for me. I think there are some good clauses in here. In particular, there's one that says that "if a personal directive contains an instruction that is prohibited by law, the instruction is void." I would read that as the anti-euthanasia clause, and I think that's a good clause to be in there. I'm a little nervous that it's even in there, but I understand why it's there. I'm pleased to see that a clause along that line is in the Bill. I think that's a good move, and I certainly support that.

8:50

Section 7 talks about the contents of personal directives. It deals with a whole variety of issues rather than just health care information, and I think that's a good piece of the Bill as well. When a person is trying to put one's thoughts and one's affairs and one's business in order as one nears the end of one's time on this earth, then certainly you want to deal with more than just health care issues – again, because of the variety of changes that are in there.

I do want to raise one concern, and that is with respect to the issue of the agents themselves. As I read through the Bill, I have a little difficulty understanding how or who would be picked as an agent, because it sounds to me like the Bill is drafted in such a fashion that the agent should not be a family member. There's a section that says that the agent may not "receive any remuneration" for the services of being an agent unless it is provided specifically within the personal directive. Okay, you can't pay them unless it's in the personal directive itself, yet there's no disentitlement in a further section, section 28: "a disposition under the will of the maker." So there may not be any pay up front, but there might be something down the road. I'm wondering if people are suddenly going to create for themselves a new career, if you will, or the new occupation of being an agent for individuals who choose to produce for themselves a personal directive.

So I guess I'm a little concerned about that, in particular when you look at the section that deals with liability and protection. It says:

> No action lies against the agent for anything done or omitted to be done in good faith while carrying out the authority of the agent in accordance with this Act.

That's section 27(1). Now, I guess the issue is then: what about the competence of the agent? There is some reference to the fact that the agent should be talking back and forth with the service provider. "Service provider," I take it, probably means health care provider, although that's not spelled out either. What if, quite frankly, the agent doesn't know what they're getting involved with in terms of the task before them? They may proceed with a decision, believing it to be in good faith, but in fact they really are not competent to make that decision. I think that could make some difficulty for the agent. It could make some difficulty certainly for the maker of the personal directive, and it could make some difficulty for the family as well.

Of course, there is a section that says that regardless of what happens, in the case of emergency services, if an emergency arises, a health care provider can overrule the agent, can overrule the court. Certainly under the Hippocratic oath that medical practitioners take when they start their medical practice, they're required to provide the best health care service they can. So it seems to me that when push comes to shove, if we really look at this entire piece of legislation, I guess I go back to the original question that I started with: what real difference will it make if we pass this piece of legislation? Will there be a significant change in the way health care is provided for those individuals who would like to make a personal directive? By having this piece of legislation, is it going to make it any more binding? Is it going to make it any more certain, I guess, in terms of how their health care is going to be provided at the end of their days?

As I said, we have the court review. We have the family, presumably, that could make some kind of an appeal, I guess, if you will, to a health care provider. It seems that the family has been specifically eliminated from this entire piece of legislation. While I'm sure that from a lawyer's background there have been many cases where families have created more problems than they've helped, I think there have been other cases where families have really been incredibly supportive to a person towards the end of their days. So I guess I'm disappointed that there was a backup system where if no agent had been appointed, then the family, the nearest relative, be that a spouse or a brother – I'm sure those are all laid out in other pieces of legislation – would be sort of the default agent, if you will. That was in an earlier piece of legislation. I think it was Bill 58 we had in this House last session. That has now been removed, and I'm little disappointed that has been removed.

[Mr. Herard in the Chair]

So, Mr. Speaker, I think that the member has taken a really good stab at trying to deal with a very difficult and very sensitive issue, and I compliment her for that. I'm not sure that this Bill will solve those problems, given what I see to be some of the alternative choices that can be made by the maker of the personal directive, by the agent responsible for that individual, or even, for that matter, by the courts.

So I look forward to further discussion and debate on this Bill at second reading and at future stages. Thank you, Mr. Speaker.

MR. WICKMAN: Mr. Speaker, I'll keep this relatively short. I have had the opportunity to speak to the Member for Three Hills-Airdrie on this particular Bill. I've commended her in the last go-round when indication was given that this Bill would be coming forward. The Member for Leduc, I thought, made not only a very, very emotional presentation but a very factual presentation based on experience that he went through with somebody very, very close to him. I think that illustrated the importance of the individual who chooses to give that directive as to what they want to happen to them, what care they want or don't want: pulled off a support system, so on and so forth. In other words, they want the right of self-determination in that particular sense at that particular time.

Mr. Speaker, without question, it is a Bill that is long overdue. It's a Bill that I predict we'll see as legislation not only in Alberta but in all provinces throughout the country in time to come. So I commend the member for bringing the Bill forward, and I

commend the government members for supporting it and the members of this caucus that have spoken out also in support of the Bill, pointing out some of the shortcomings, some of the flaws, which I think can be used as the basis of forming amendments during committee stage to make the Bill even more beneficial than it is at the present time.

So on that note, Mr. Speaker, I'll conclude and again thank the member for bringing it forward.

[Motion carried; Bill 35 read a second time]

Bill 30
Health Statutes Amendment Act, 1996

[Adjourned debate April 17: Mr. Chadi]

THE ACTING SPEAKER: The hon. Member for Calgary-Buffalo.

MR. DICKSON: Thanks, Mr. Speaker. I'm pleased to rise and join the debate on Bill 30, the Health Statutes Amendment Act, 1996.

This is an awkward piece of legislation, because really what it does is purport to be a kind of omnibus amendment Bill that addresses changes to the Hospitals Act, the Nursing Homes Act, and the Regional Health Authorities Act. There are myriad changes and amendments. There's no overriding theme, I suppose, other than the fact that it demonstrates that if you're going to embrace and undertake health care reform, you'd best start off acknowledging how ambitious a task that is. It means that you have to be prepared to invest the time to plan. Otherwise you keep on having to back up and retrace your steps, and you have to keep going back and undoing or redoing or patching up or trying to fill in the holes.

9:00

I suppose people on the government side will say that what I'm talking about is a prescription for inertia and that you have inertia by paralysis, that that's the alternative. I recognize that we may be talking about two very different views. Maybe we settle out on the basis of saying that, yes, it certainly requires some boldness on the part of government to embark on structural health care reform, but that can't eliminate or do away with the very onerous responsibility to ensure that the plan is sufficiently comprehensive, that there's been adequate consultation to ensure that these kinds of amendments are kept to a minimum, because really what they do is tend to undermine the confidence that Albertans have. They tend to undermine the confidence that health care workers have that the reform fits together and that the architects and the engineers driving the program really have a clear vision of where they want to end up.

When I understood that Bill 30 was coming in, there were some things I hoped that it might address. Now, as has been noted before in the past, under the Hospitals Act, one of the statutes which is the subject of amendment, as well as under the Alberta Health Care Insurance Act there are provisions that deal with restrictions over access to personal health data. Because of that, both sections 3 and 5 in the Freedom of Information and Protection of Privacy Act work conjointly to exempt this kind of information entirely from the scope of that freedom of information Act, and that's regrettable. I've asked the hon. Minister of Health – I asked her in the designated subcommittee; I've asked her in the Legislative Assembly – what's going to be done about that? The information that's involved in decisions being made under the Hospitals Act is of importance to Albertans from two perspectives: the perspective of Albertans that want to be able to get personal health data, on the one hand, and on the other, concern that taxpayers and consumers of health care services want to have a measure of comfort that things are unfolding in a measured, intelligent, rational, planned, coherent kind of fashion. The minister's response has always been: we're working on it; we're looking into it.

Well, it's been a couple of years since the Regional Health Authorities Act was dealt with in this Assembly. It's been three years since the government embarked on the path to lead us to freedom of information. One would have thought, given the importance of health information, that this would have been, if not fast-tracked, at least brought along with all of the other decisions to be made. But we see now with the advent of Bill 30 that it's not in there. There's absolutely no provision, no hint that the government is going to address that in this current spring session of the Legislative Assembly.

That's particularly regrettable, Mr. Speaker, because it's something that Albertans are now starting to understand: the value of freedom of information when it applies to government departments. I find most people are astonished, just astonished, that they can't access personal health information even though they can access information about the Department of Environmental Protection or the Department of Public Works, Supply and Services or the Department of Community Development. They can get all kinds of information, or at least can attempt to get all kinds of information, from those departments. When it comes to health information, "Sorry; you've got no right." If you're a patient and you want health information, you have no right to correct the information, you have no right to see what's there, you have no right, short of a judge's order, to ensure that corrections are made to it and that those corrections are sent to other people in the health care system that may have that information. I thought Bill 30 would have provided the absolutely ideal opportunity to address that major, major oversight, but alas, it's not to be found anywhere in the Bill.

The concern that I see with Bill 30 is the kind of pyramiding that's going on and this consolidation of health care services. From a utilitarian perspective you may say: "Well, how else could you do it? Isn't that the way that makes greatest sense? Isn't that what logic would dictate?" Well, that argument is compelling and indeed very attractive, but when we find that the government isn't moving apace to be open and transparent and that when they subdelegate these key health care administration decisions, they're not willing to be open and transparent, what happens then is that an administrative plan that on its face might seem to be logical and rational becomes simply an aggregation of power, an aggregation of influence, and individual Albertans simply get further and further and further removed from the levers of power. I think that's exceedingly unfortunate.

The one positive thing I support is dealing with the ability of regional health authorities to raise funds for capital purposes. I spoke against that when we were dealing with Bill 20 I guess some two years ago, in the spring of 1994. I'm glad to see that that's covered off. The provisions specifically dealing with the Hospitals Act that give me some concern have to be this: that at a time when we've recognized, at least the courts have recognized, the importance of admission privileges for physicians and when there's now a whole body of jurisprudence that tries to build some safeguards into that whole system of admission privileges, Bill 30 virtually ignores all of that. Bill 30 doesn't in

any sense acknowledge the very substantial public interest that there is in terms of that whole process of physician admitting privileges in hospitals. I think it's deficient in that sense. The capacity to move an amendment to deal with that may be more than we'll have opportunity to do in whatever time is remaining in the spring session of the Legislature, but I want to record my concern now that that's a particular problem.

There continues to be a problem in terms of regulations. We see still that in this legislation there is vast delegated lawmaking to the Lieutenant Governor in Council, for all the reasons I had said before. We talked about the importance of life-and-death kinds of decisions under another Bill and why those should be dealt with, at least why those regulations should be dealt with, as part of some parliamentary or legislative scrutiny.

The same thing would apply when you're dealing with nursing homes. You know, there have been a number of studies done of Calgary area nursing homes that document the shortcomings in our nursing home system. When I look at Bill 30, I ask myself: is that going to address some of those serious problems in terms of nursing homes? I regret to say that maybe – maybe – in the regulations we might see something that would give us a measure of comfort but nothing on the face of it. It's fine to have an official administrator of a nursing home, and it's fine to have the power built in, as it appears on pages 22 and 23 and 24 and 25 of Bill 30. But is this going to address the problems we have in nursing homes where you have in too many cases staff that aren't adequately trained, staff that are underpaid? Is this going to address the question that in too many nursing homes we have seniors who in many respects are still mentally alert but are put in a situation without stimulation, without things to challenge them, nursing homes that still even in 1996 tend too much to be warehouses of our elderly instead of places that recognize their dignity and treat them with the kind of respect they should be entitled to?

9:10

I think the concern I have as well when I look at Bill 30 is the growing bureaucracy we have at the regional health authority level. Although the powers are rapidly expanding, the accountability and the transparency of the work of regional health authorities is not keeping pace. Not only is it not keeping pace, but it's been left in the dust. This is maybe a system designer's dream opportunity to be able to design a system with almost no attention to the end product, with almost no attention to the quality of services being provided to nursing home residents, with little care being given to the care that patients receive in hospitals. One wishes at some point that the government show that same kind of concern with the actual care being delivered to individual patients as it demonstrates for macroadministrative planning. It seems to me that Bill 30 is one of those Bills. It's remote, it's empty, it's heartless, and it doesn't address that whole series of concerns that we all know exist in nursing homes, that we know exist in hospitals. Why wouldn't we be dealing with those kinds of things? It just is not to be found.

I think, Mr. Speaker, that the government has little credence when it comes forward and represents something as a housekeeping Bill, because we invariably find on scrutiny that it's much more ambitious than that, that the Bill tends to reflect a view of the world that's very different, I think, from the expectation and indeed the hope of many Albertans in terms of the kinds of services they wish to be able to access. I think one would have thought that after the fashion in which Albertans have registered their concern about health care, the government would make a bolder commitment to transparency. One might have hoped that the government would have made a more concerted effort to ensure that the work of regional health authorities is more transparent, to strip away much of the secrecy that now is part of the Hospitals Act and permeates the health care system. We're not so fortunate, and those kinds of advantages are not going to accrue to Albertans by reason of Bill 30. In fact, I think all Albertans are moved a little further back from that which I think they want to receive and want to be able to access.

There's a number of specific changes which I'll propose perhaps when we get to the committee stage. I've tried to keep to a level of abstraction and to deal with, as best I can discern them, the principles in Bill 30, but the real work I think has to be done at the committee stage of this Bill. I think on the basis of the incredible powers, the almost unmitigated secrecy that surrounds the health care system and the delivery of health care services, one would be obligated to oppose the Bill, because it surely is for the propounder, it's for the government to demonstrate that these other concerns I've touched on are being addressed, have been recognized, that there are solutions, there are plans to deal with them. There are nary to be found in Bill 30, Mr. Speaker, and I look forward to the committee stage to be able to discuss those further.

Thank you very much.

THE ACTING SPEAKER: The hon. Member for Fort McMurray.

MR. GERMAIN: Thank you very much, Mr. Speaker. Other Members of this Legislative Assembly in debate have indicated that this Bill, coming as it does as a major and substantive revision to three Bills that govern the conduct of health providers in the province of Alberta, makes it very difficult to speak to. For the many fans of the hon. Member for Bow Valley who wonder if and when he will ever be the Minister of Health, this might be said to be his coming out Bill or his opening approach to his ideas on how to legislate in the province of Alberta, and to the extent that he is attempting to consolidate different ideas and bring them forward to discuss health, this may be a laudable objective.

However, I wish that the hon. member had not been duly constrained by the ideology of the government in his efforts in this regard and had struck out in a bold and decisive way to ensure that we have good health in the province of Alberta, good community health, a level of continued responsibility for that good community health, and generally, as it relates to all of this legislation, control where it could be said that the buck stops somewhere.

What we have instead in this particular piece of legislation, in my respectful estimation, Mr. Speaker, is the opening of more doors for the increased privatization of health and the delivery of health service and nursing home services in the province of Alberta, we have increasing delegation, and we have of course the failure, the absolute failure, of the government to recognize some considerable objections to the health authorities legislation of previous years. As a result, we find ourselves again debating issues that were debated years ago.

Now, ironically, as I will point out, some of the ideas and concepts brought forward in good faith by the Official Opposition have now found and threaded their way into government legislation, and one can only decry the amount of time that was spent on those where we urged members opposite to grab the good

ideas of the Official Opposition and run forward with them.

Sometimes, you know, during question period, Mr. Speaker, there are catcalls across the floor where there is the suggestion: "Give us your good ideas. Give us your good ideas." It's a bit like the university student who comes home every semester and shows his parents a series of straight of As and the parents seem disinterested or noncommittal on it. Pretty soon the university student, of course, stops coming home with the As, and then pretty soon he stops getting the As. It is an example, I think, that the government should heed as I go through some of the sections of this Bill and discuss some of those issues.

9:20

Dealing with the first segment of the Bill, the first segment, Mr. Speaker, deals with the Hospitals Act, which is the first part of this Bill. You know, there are some very interesting issues that have been touched on by other speakers, and some that I hope to touch on afresh and others touch on with a new perspective. You see the government's approach to this thing begins in section 41 of the Bill where the minister on written request can compel various hospitals and boards of approved hospitals to bring forward records that she specifically requires, but there is no further downstream provision for the minister to make that information public in the Legislative Assembly, excluding those issues that relate to confidential records of patients and confidential records of the personnel at those institutions. There is none of the requests that the minister makes in this section that should not have a companion direction that that material will be filed in the Legislative Assembly by way of a report, and I would urge, if and when amendments come forward in that area, that the Members of the Legislative Assembly should be moved to build those in to their own protection so that all of the Members of the Legislative Assembly can do a good job for their constituents.

Whether you happen to be a member that supports the government or a member that supports the opposition, all of the Members in this Legislative Assembly, I think, put the institutions in their ridings on a very high plane, and they are concerned for their institutions and for the services those institutions provide. Therefore, if information is important enough that the minister will direct and demand that the hospital produce it, then likewise there should be a flow-through companion section that obliges that information to be tabled. With the appropriate editing to protect medical confidentiality and personnel records, that should come through and be put in the Legislative Assembly.

There's another interesting section in this particular Act found on page 14 that deals with what the government is going to put in for a new section 49(1). This basically is a discharge section, and it simply allows a hospital to jettison somebody that no longer should be in the hospital either to somebody who's liable for payment or to the minister of social services. So the minister of social services picks up the responsibility of in fact being responsible for people who are to expelled out of a hospital.

What the legislation does not do, Mr. Speaker, is it does not deal with the issue of the continuum of care. For example, if somebody is to be removed from an acute care facility and there is no extended care bed that is ready for them, then surely there should be a section in this legislation that prohibits the hospital from ejecting somebody when they need a continuum of care. If as a result of the government's failure to plan, failure to provide, and failure to properly fund there is no place for that person in the continuum, then in my respectful estimation they should stay there rather than be discharged to the random care of the minister of social services.

The minister of social services has numerous other issues on his plate, Mr. Speaker, all of which are very time consuming and require the daily attention of the minister, and this burden is not one which in my view should be taken from the health care system and put into Family and Social Services. If there's no place to put a person who needs ongoing care of some sort, then that failure rests with the government and should stay with the government.

Anybody that needs any further evidence that the government is moving into the area of privatized health care as quickly and as deeply as they can need only look at section 67 – that is, amendment (38) – in this Bill found on page 17. In that particular section what was irritating the government before was that it spoke in terms of institutions describing themselves as hospitals that weren't properly doing that. Now, of course, they admit of the possibility that there will be other owners because they say, "No owner or operator of an institution" will hold themselves out to be a hospital. That amendment, Mr. Speaker, would not have been necessary but for the clear possibility that this government intends to move further down the privatization model of health, and I want to say that anybody who suggests that the government does not have that on their agenda should simply rip open this Act, read page 17, and ask yourself why that amendment is necessary if it is to the contrary.

You know, I want to take you, Mr. Speaker, to a discussion found on page 19 of this Bill, amendment (6) on that section that deals with paragraph 8. It indicates that if an operator is going to close any kind of a nursing home facility, then they must advise the minister, but regional health authorities are exempt from that provision. Why would the minister lose interest in nursing or extended care facilities simply if they are provided by the regional health authority? Surely if the minister is the Minister of Health, she has an all-encompassing jurisdiction, and indeed coupled with that jurisdiction in my estimation comes not only the jurisdiction but the obligation to inquire and obtain indications of any facility of this nature being closed irrespective of whether or not it is operated by a regional health authority.

The other player that is left out of the notice equation, Mr. Speaker, is the public in the community where that facility exists. A nursing home in rural Alberta is not like the corner grocery store. That corner grocery store stays open as a business. The nursing home stays open in part to fulfill a community need and in part because the Minister of Health and indeed the hon. member who sponsored this Bill have integrated those issues into their planning on health care needs. It seems that when you omit a communication to the community, you are in fact exhibiting, first of all, rudeness but more practically speaking you are exhibiting a lack of interest in the health care needs of the community. It seems to me that that section should be amended to encourage notice to the community.

Now, section 10, found on page 20 of the Bill, is another interesting section, Mr. Speaker. Why was that amendment necessary, you will ask. It seems to me that the only thing that has changed in that amendment, except for drafting, is the deletion of this provision, that if the minister terminates a nursing home contract, she may provide for the payment of compensation to the operator. That was in the old. Now in the new it simply allows for the termination on one year's notice. Now, it's true that that's been expanded to allow either party to do that, but the obligation on the minister to provide compensation if she elects to terminate a nursing home contract is gone. Someone might have invested a substantial sum of money in that. So not only does the

government encourage privatization, but when they do accept the privatization model, they do not want to treat those private operators fairly, and they take away the minister's right to provide compensation, I suggest, even when the minister has misread or misjudged the situation. Again we find that in that section there is no community notice.

Another intriguing portion of this Bill is how the minister has jettisoned her responsibility. Now, hon. members will say: "Oh, that's not so. The Member for Fort McMurray exaggerates." That will be the hypothetical comment that is made. Well, do I exaggerate, Mr. Speaker? You be the judge. [interjections] I hear the hon. Minister of Family and Social Services, a colleague who looks after the largest riding in all of Alberta I must say in terms of territory, and he says he's doing a good job. That's not part of the debate tonight, but what he says and he acknowledges is that I don't exaggerate.

So against that vote of confidence I will now draw the Assembly's attention to what is found on page 23 of this particular Bill. Does the minister delegate her responsibility, and does she make it difficult for nursing home operators to function? You be the judge, Mr. Speaker. In section 21(1), that is intended to replace section 21 of the nursing homes legislation, we have to look at what was there before. What we see was there before is that before the minister could pull the pin on a nursing home, she had to be satisfied as follows: "if the Minister is satisfied." That was the test that they put in, an objective test: is the minister satisfied?

Now, remember that many thousands if not millions of dollars can be affected by these decisions, and in fact there is a right of appeal to the Court of Queen's Bench if a nursing home licence is pulled. The old legislation said, "if the Minister is satisfied." Well, what is the new test? Mr. Speaker, I know that you'll want to know what the new test is. The new test is found on page 23 of this Bill. The new test is "if the Minister is of the opinion." Is of the opinion. Now, is there a difference that is more than just semantics or draftsmanship or legalese between "if the Minister is satisfied" and "if the Minister is of the opinion"? Most certainly there is a difference. One is a objective test that requires a rational assessment and must satisfy the reasonable man. The other is strictly a subjective test based on the minister's opinion. I mean, will that be different on the first of the month as opposed to Christmas eve? Will it be different before the minister starts her holidays as opposed to when she returns from her holidays? You betcha.

9:30

Why was it that nursing homes, which the government believes provide a decent service in the province of Alberta, were to be treated such that their legal right to preserve their business, including the right of appeal if their business is terminated, would now be altered from the objective test to the subjective test? That is very, very hard to understand, Mr. Speaker, and one which the hon. sponsor of this Bill, himself a medical man and reputed widely in his riding and across Alberta to be the minister in waiting for the Department of Health, would want to come up with an explanation for. Why should that test so change and be watered down so badly to such prejudice to the nursing home operators in this province? I think when the nursing home operators in this province grab this and reread this again tonight, they will be apoplectic that what used to be a hard, solid test of reasonableness is now simply watered down to an opinion.

We then go to section 23, the section found on page 25 of this legislation, Mr. Speaker. Again we see a delegation and an abdication of the minister's responsibility if a regional health authority is operating a nursing home. Previously the minister could step in and appoint an administrator. Now that section has been dressed up and reworked. One of the substantive changes is that the minister now has no right to do so if an RHA is operating the nursing home. Why would that be? Why would that be, if the minister's overriding jurisdiction is to preserve the integrity of the health care system in the province of Alberta and if previously this government decided that even superintendents of Catholic school boards could not be appointed without the approval of the minister? Why in that educational approach would we have that much hands-on scrutiny and in the area of nursing homes the minister washes her hands completely, to the point that she will not even appoint an administrator in an appropriate case of a nursing home that is run by an RHA?

We go on with the secret information concept that was spoken to so eloquently by the hon. Member for Calgary-Buffalo earlier, Mr. Speaker. On page 27 of this legislation the operator of a nursing home will be obliged to supply information to the minister, but there is no further corresponding obligation for the minister to share that information, even edited for personnel and health record issues, with the Members of this Legislative Assembly.

Finally, we now come to the amendments to the Regional Health Authorities Act. You will recall, Mr. Speaker, that the Regional Health Authorities Act is relatively new in the province of Alberta. You will recall that the government came forward with much fanfare about this legislation saying that they had debugged it completely and they would not countenance any negative debate about the RHAs. So despite that, there was substantial negative debate from members of the opposition in this Legislative Assembly, and what happened? It was as if the sky opened, and amendments came forward to that RHA legislation. What was phenomenal about those amendments and what set and established for all time a new record is that the amendments were greater in volume, size, and detail than the legislation they sought to amend in the first place. Now, what made that particularly comical was that that was from the plateau of a Bill that had been exhaustively studied and fine-tuned so that the government would not admit to any flaws in it.

Now, less than three years into the operation of those programs, we again find amendments. And what do we now find in these amendments? We find that the matters that were viewed to be objectionable by the Official Opposition in this Legislative Assembly are now becoming the government's legislative direction. They have, for example, removed such things as the taxing without electoral representation that was so bothersome to municipalities and that was raised in this Assembly by the hon. Leader of the Official Opposition, the hon. critic in charge of health care issues, and that other Members of this Legislative Assembly raised so eloquently to protect the system of public health in the province of Alberta.

With that inspirational reminder, Mr. Speaker, of the good work of the Official Opposition in this Legislative Assembly and if you'll accept it with my humble apologies as an unpaid advertisement, I will now take my place and allow others to speak on Bill 30, which is of fundamental importance to Albertans because it deals with issues that they have considered very important and have told us so time and time again, and that is the issue of health care in the province of Alberta.

Thank you, Mr. Speaker.

THE ACTING SPEAKER: The hon. Member for Calgary-North West.

MR. BRUSEKER: Thank you, Mr. Speaker. I, too, want to make some comments about Bill 30, which, as has been pointed out, is a Bill that proposes to amend three other pieces of legislation within it under the Health Statutes Amendment Act, 1996. It seems the government is moving more and more to this kind of a philosophy wherein we see a Bill come forward in this Legislative Assembly that upon a little closer analysis allows for a number of pieces of legislation to be amended. This new tactic requires that analysis of these pieces of legislation becomes a little bit more involved.

Mr. Speaker, as I read through Bill 30, it seems that the government is moving more and more to removing itself from the governance of health care. As you well know, being a representative of that fair city, we've already seen the closure of one hospital within the city of Calgary, that being the Holy Cross hospital. We've seen the relocation of the Grace hospital from its original site at the base of the 14th Street N.W. hill to the Foothills hospital site further to the northwest in the city of Calgary, and within a year's time we are expecting to see closure of the old General, what is now the Bow Valley centre down on Memorial Drive, in a more central location.

As the government moves farther and farther away from the delivery of health care, it seems that we will be seeing – and of course we are seeing in Calgary – that decisions about health care are being made by unelected individuals who are appointed by the government to make decisions on our behalf. Much of what is determining how those decisions will be made and how those decisions are being made is simply financial, Mr. Speaker. I think in his comments when he referred to it, the Member for Edmonton-Glenora said that basically what we have here is the budget process driving health care rather than the other way around. Certainly it is important for us to have a balanced budget, but by doing this in the fashion that we have and simply appointing unelected regional health authorities to make decisions that indeed the government should be making, it has allowed the government to fob off some of the heat from themselves and onto others in an attempt to make themselves look less like the bad guys and gals in terms of health care delivery in the province of Alberta. Certainly Albertans need to remind themselves that it is the government that is making much of the decisions and simply directing the regional health authorities to make the decisions.

We see a move to allow the government to give regional health authorities the ability to enter into contracts, to sell off assets which have been built and paid for with public dollars, with tax dollars. Now the revenues generated from those sales of health facilities are to go back to the regional health authorities, but of course we have to wonder exactly how they're going to be used. As soon as we start allowing the regional health authorities to start making independent decisions rather than making those decisions here in the Legislative Assembly, it removes a level of scrutiny of expenditure of health care dollars that I believe should be still in force.

9:40

Mr. Speaker, when you look at some of the sections of the Bill in particular, the regional health authorities are going to be granted a number of degrees of latitude, if you will, under regulations that are coming forward that are going to be eliminated when section 1(3) is repealed in this Act, and it simply says that the Lieutenant Governor in Council is no longer going to be making regulations for the purpose of facilitating administration. In other words, regional health authorities are going to be given, as I interpret that, a broader range of authority, a broader mandate to do what they will, where they will, and as they see fit.

[Mr. Clegg in the Chair]

Mr. Speaker, another section talks about the arrangement of a contract between a nonregional hospital by a regional health authority. Previously, if the contract was to come to an end, two years' notice was required. Now it's simply "reasonable notice." Reasonable to whom, I think, is a definition that is lacking from this piece of legislation. Reasonable notice I think can vary depending upon the situation, depending upon the individual, and depending upon the regional health authority. So when we have clauses like "reasonable notice," then it begs the question: who determines what is considered to be reasonable notice?

Mr. Speaker, the other sections in the Bill. Section 1(13) changes the definition of a board to include a "corporate body or person that owns or operates a hospital." It seems to me that with the closure of hospitals already and the impending closure of other hospitals in the future, as soon as we start talking about boards to include a corporate body, then we are talking very much the privatization of health care services in the province of Alberta, we are talking very much the creation of private, for-profit hospitals, and we're talking very much, to my way of understanding, a move away from the Canada Health Act.

Now, I think that is a concern. Alberta has already been penalized over the last few months by the federal government for not subscribing to at least portions of the Canada Health Act. I believe now we are in the neighbourhood of 1 and half million dollars' worth of fines that have been levied upon this government by the federal government, and as far as I can tell, there is no end in sight to that going on. I certainly hope that there are some negotiations going on between the two levels of government, but I believe the figure is $420,000 a month on average not coming to the province of Alberta. I think that should be of concern to Albertans that we see that kind of intransigence by this government. As I look at certain sections that seem to me to promote private, for-profit health care in the province of Alberta, then I think we have increasing concerns.

Mr. Speaker, another section talks about even who it is that the board is going to appoint – this is section 1(16) – in terms of who is going to be appointing the medical staff to the board. This is found on page 7 of the Bill, and it says:

> The board may grant physicians and other health care practitioners access to hospital facilities on any terms and conditions set out in the medical staff by-laws, the general by-laws or any contract for services or employment.

Now, again, those bylaws may be quite contentious and may in fact create some difficulty for physicians' getting the ability to have access to hospital facilities.

Mr. Speaker, the best people to make decisions about health care in the province of Alberta and where we are going with our health care system of course are those that have the training, the experience, and the expertise; in other words, the people who are involved with delivery of health care service in the province of Alberta. Section 1(24), as I read it, allows the minister to "designate any person or entity to conduct . . . [an] investigation." The question then is: how will those individuals be selected? Currently we have this restricted to the Alberta Hospital Association, the Alberta Association of Registered Nurses, or the Alberta Medical Association. Those three groups, I think, Mr. Speaker, are clearly recognized as having some expertise and some experience in the area of the delivery of health care services. If we simply broaden it, open it to any person or

entity, the obvious question is: what kind of skill or expertise or training will that person or entity bring to its review? I think that should be a concern for Albertans as well in terms of deciding where we are headed in terms of mediation and preparation of reports back to the government and to the minister.

Mr. Speaker, section 1(31) deals with the minister withholding grants. Obviously, I can't deal with all of the different parts of the Bill. I'm trying to point out some particular concerns that I have with the legislation. It allows the minister to

> suspend or adjust any grants or payments to which the hospital may be entitled under this Act until the board complies with this Act or the regulations.

That is going to be repealed. Now, what that says to me is that dollars will just start to flow without any control or, if you will, a veto mechanism by the minister. Now, it seems to me that if the Minister of Health is responsible for the delivery of health care services in the province of Alberta, then the biggest stick, if you will, that the minister can wield is the payment of funds much as she is experiencing from the federal minister with respect to a transfer of funds. Now, certainly a good portion of that kind of authority the minister holds by virtue of the position of being the minister and holding the health care purse strings, if you will, is going to be eliminated by the repeal of section 52 of the current legislation. If we repeal that section, a certain amount of the minister's authority to control what happens is going to be lost. I think that should be a concern, again, to Albertans. As we move more towards privatized health care with the presumed sale of facilities that is coming forward, then I think that should be a concern for Albertans.

Mr. Speaker, one concern that I have in particular deals with section 35 dealing with the disposition – and this is section 1(35)(f) found at the top of page 16. It proposes to make what appears to be a small change, but it says that currently in terms of disposing of a hospital, it could be a "district board or board of an approved hospital." Now it says that it can't be sold by anybody "other than a regional health authority." Now, I, being a Calgary member, am concerned, as I read that. That sounds to me like the Calgary General hospital/Bow Valley centre clause. The Bow Valley centre is not owned by the regional health authority. As I understand it, it is owned by the city of Calgary. By putting this piece of legislation in there, it changes who may dispose of the Bow Valley centre. Currently, the regional health authority does not have any authority for the disposition of the facility. They have some authority with respect to the operation but not in terms of the disposition. So if the facility is closed and health services are no longer being provided there, which is the plan, as I understand it, for approximately a year from now, then if we put this section in, it will allow the regional health authority to dispose of that facility, whereas the facility is owned by the city of Calgary, and it is the city of Calgary that should have the control over the disposition of that facility. Now, I'm concerned that the city of Calgary, which has put a considerable investment into that facility, is potentially going to lose out on whatever revenue was generated by the disposition of that asset. I hope that the minister or the member who's sponsoring the Bill can clarify that, because as I understand it, the Bow Valley centre is in kind of a unique situation because of that, compared to other facilities around the province. So that is a concern I would raise with the minister with respect to that particular section.

9:50

Mr. Speaker, the Nursing Homes Act is another piece of legislation that is amended under Bill 30, the Health Statutes Amendment Act, 1996. I guess just one concern I want to raise with that is that, as I look through that, it allows nursing homes to proceed with contracts that don't necessarily comply with all government regulations. If we have a private contractor or owner/operator of a nursing home, then it may well be that the operator doesn't have to comply with government regulations and can proceed apace with the provision of health care services to its clients, if you want to call them that, in a manner that it sees fit as opposed to some hard and fast regulation that the government has put forward. Now, the concern I raise with that of course is that, as you well know, the clients one finds in a nursing home may, to a variety of degrees, be able to express concerns for themselves, and others may not.

Many years ago, Mr. Speaker, I had the opportunity to work in a nursing home. Of course, one of the interesting things in working with those clients is that some of them are absolutely fascinating to chat with and have got a wealth of experience and stories to tell you about their lives and what they've done and where they've been, and others I'm sure would have equally fascinating stories to tell you if they could. Unfortunately, because of strokes or mental incapacity, some individuals lose the ability to speak up and raise concerns on their own behalf. Now, if we have nursing homes that no longer are required to abide by regulation that prescribes the fashion in which they are to operate, I guess then I'm concerned about some of those clients, some of those residents of nursing homes who may well be taken advantage of by operators if the regulations are eliminated altogether. So with respect to the Nursing Homes Act, Mr. Speaker, I think that that is a concern and is something that should be re-examined before this Bill is passed in its current form. It is a concern that I think should be re-examined.

Mr. Speaker, the other section, again, deals with the disposal of assets. We've seen that in the Hospitals Act. There's a reference again to it in the Nursing Homes Act. Previously it was required that the minister would have some input directly, would have some say in the disposal of assets with respect to hospitals and now also with nursing homes. Section 5, the Nursing Homes Act, which can be found on page 19 of Bill 30, simply repeals that. By simply repealing it, of course, it would allow the owner/operator of a nursing home facility to dispose of the property as they see fit. Now, if we are going to see nursing homes disposed of by the owner/operators, the obvious question then is: what kind of notice is going to be provided to the residents of that property in terms of allowing the families of those clients, of those residents, the chance to provide and seek alternate places of residence for those individuals?

Mr. Speaker, the third section is the Regional Health Authorities Act, which I would like to make some comments to, but in light of the hour I would move that we now adjourn debate on Bill 30.

THE ACTING SPEAKER: Before I call the vote to adjourn debate, could we have unanimous consent to revert to Introduction of Guests?

HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed, if any?

head: Introduction of Guests

THE ACTING SPEAKER: The hon. Member for Edmonton-Rutherford.

MR. WICKMAN: Thank you, Mr. Speaker. I'd like to introduce to you and through you to Members of the Legislative Assembly an outstanding individual from the southeast part of this city, the regional vice-president of the party that every Albertan seems to love, Rick Miller, in the public gallery. If you would stand and take a bow and be recognized by members of the House.

head: Government Bills and Orders
head: Second Reading

Bill 30
Health Statutes Amendment Act, 1996
(continued)

THE ACTING SPEAKER: The hon. Member for Calgary-North West has moved that we adjourn debate on Bill 30. All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

THE ACTING SPEAKER: Opposed, if any?

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: Carried.

[At 9:57 p.m. the Assembly adjourned to Tuesday at 1:30 p.m.]