Legislative Assembly of Alberta

Title: **Tuesday, May 4, 1999** 8:00 p.m.

Date: 99/05/04
[The Speaker in the chair]

THE SPEAKER: Please be seated.

head: Government Bills and Orders
head: Second Reading

Bill 34
Partnership Amendment Act, 1999

[Adjourned debate April 27: Mr. Yankowsky]

THE SPEAKER: The hon. Member for Edmonton-Norwood.

MS OLSEN: Thank you, Mr. Speaker. I'm glad to see you here this evening.

Mr. Speaker, this bill creates a new entity known as a limited liability partnership. Currently all partners are liable for the misconduct or malpractice of a partner or agent of the partnership, and this would allow for the liability to be limited to the individual person involved. Some of the concerns that I'd like to raise in speaking, by the way, in favour of this particular act . . .

AN HON. MEMBER: Question.

MS OLSEN: Not so fast. We won't call the question yet, hon. minister.

Just a little bit of a background. Currently under the existing Partnership Act all members of the partnership are liable for malpractice of any partner or an employee, agent, or representative of the partnership. The limited liability partnership would remove liability from a partner when another partner, employee, agent, or representative was held liable for negligence, wrongful acts or omissions, malpractice or misconduct. The exception would be if the partner knew of the malpractice at the time it was committed and failed to take reasonable steps to prevent it or where the malpractice was committed by an employee, agent, or representative whom the partner was directly responsible for supervising and the partner failed to provide adequate supervision. Those two particular tests would have to be met in order for somebody to be held liable with this new act. I think that partnership would provide reasonable protection from liability for individuals in a partnership when they are not responsible. This in turn would reduce liability insurance costs for partnerships, which could benefit consumers of these services to whom the costs are passed on.

That's one of the critical components. Those folks that are involved in professional corporations where they have to take out liability or malpractice insurance is when it's a partnership, and when there are all of these folks and other folks, professionals, involved, the insurance rate is somewhat higher, so it makes it difficult to obtain any reasonable insurance cost. This, then, makes it more reasonable for that partner to just assume the liability insurance for himself as opposed to a group of other professionals in his corporation. That's a fairness issue, and I think it will limit the risk factor, lower the threshold for insurance rates, and that is a good thing.

The bill will create a new entity known as, as I said, the limited liability partnership, and I think the other changes in here are not very substantial.

One of the things I noticed that is not in here is that this only applies to those professional corporations that exist. They include the lawyers, the doctors, the dentists, the chartered accountants, and those folks, but there are some other professional groups that are not covered in this particular bill; for instance, physiotherapists, veterinarians, paralegals. At some point I'm wondering if we shouldn't be looking at some sort of legislation for this or if provisions in other legislation cover those particular relationships in a business.

The other thing that I'm wondering about. We have the Vancouver Stock Exchange moving to Calgary. Does that also open up another avenue, another set of professionals that work in that industry? That's an interesting business in itself, and it would be interesting to know how far these partnerships could go with other professionals.

With that, Mr. Speaker, I would encourage all members certainly of our caucus and all members of the House to support these changes to this particular bill, and I'll take my seat.

Thank you.

THE SPEAKER: The hon. Member for Edmonton-Riverview.

MRS. SLOAN: Thank you, Mr. Speaker. I'm pleased this evening to rise and provide my thoughts to debate of Bill 34, the Partnership Amendment Act, at second reading. The act's intent, from my understanding, is to provide an opportunity for the removal of liability from a partner when another partner, employee, agent, or representative was held liable for negligence. When I look at specifically the context in which this bill is proposed, I find myself, as I often am in this Assembly, wondering what type of consultation the government initiated to establish which professions were most appropriate for this act to apply to. We know that according to the way the bill is currently written, section 11 will make changes in other acts to allow for limited liability partnerships to include certified general accountants, certified management accountants, chartered accountants, chiropractors, dentists, lawyers, doctors, and optometrists.

We've been debating this past week the Health Professions Act, which provides a regulatory framework for 30-odd professions in the health system. I am strongly on record for opposing private, for-profit partnerships within the health sector. However, it seems odd to me that out of the 30, we would choose to allow this act to apply to only four, and I'm not sure why that decision was made. I am certainly aware in my professional life that more registered nurses than ever before are seeking to establish businesses that are working to offer services in the health system. Some of them are working in partnership with other registered nurses, and some are working in partnership with other health professionals. Albeit some may be physicians, some may be massage therapists, some may be psychologists.

I wonder how the act would in fact apply if a partnership existed that included one of the covered professions but did not include perhaps one or more of the professions in the partnership. What you would set up, then, is an unlevel playing field. In fact, the chiropractor, using that example, would have liability protection with respect to his partners, but the registered nurse or perhaps the registered physiotherapist that was also a part of that partnership would not have the liability protection that is extended to the chiropractic partner. Regretfully I haven't heard the government speak on this issue. I don't know why the exclusionary application.

There are a number of other areas that are worthy of coverage as we discuss the implementation of this bill. It's interesting that the government is indicating all professions will be eligible to carry on business through a corporation using the words "professional

corporation" and therefore be eligible for the limited liability partnership.

8:10

It further would require that an application be sent to the registrar, and I'm assuming that that registrar would be defined as the professional registrar, but I am not seeing that defined at the onset of the act. Now, really the scenario could work either way, Mr. Speaker. We're either creating a new position, the registrar of limited liability partnerships, or we're seeking for the regulatory associations, the soon to be colleges in this province, to assume as a part of their registration requirements an establishment of partnership within their professional membership database. I wonder if the professions have been consulted about that.

Again, I don't believe that I saw reference to the limited liability partnership as a provision in Bill 22, the Health Professions Act. It seems somewhat odd to me that there would be some vagueness around this particular issue. Of course, there will be costs associated with that. Will it be that the registration paid by members who are part of a limited liability partnership will somehow be increased, prorated based on the number of partners? I'm not sure what the scenario might be.

An additional question will be: will it simply cover the cost of the administration system, or will it produce additional dollars for government? We've seen that to be the case somewhere, I guess, in the neighbourhood of over a 1,000 fees in this province in recent times, where the government has in fact made the fees issued by themselves, by agencies, by delegated authorities, and perhaps now by registrars in professional bodies as a profit-making enterprise, where they in fact set a fee rate that is well above what it actually costs to deliver the service.

I would also like to know from the government what this process will cost. What will be the anticipated cost for both the government and the delegated bodies in assuming this task? Again, that is not something which we've been afforded any type of a brief or a consultation report by the government, and I think it's a valid question, particularly if we again examine it in the context of the health professionals. We are expecting them to assume a much broader – well, I guess it depends on which way you look at it, Mr. Speaker. You could also look at the Health Professions Act and say that we're looking to the professions to assume a more narrow mandate, but when it comes down to the cost of delivering service, whose back is this act going to be borne by? Will it be the professions, will it be the government, or will it be some type of delegated authority, which might be the registrar?

There is a period of notice that's required by the act, 120 days, before the registrar cancels a registration of a limited liability partnership if the cancellation is due to nonpayment. Now, here's another issue of complexity. If the fee is paid as a component of the membership fee paid to the professional body or college, how in fact is the government proposing that this 120-day notice period will be implemented? There are provisions in place – and they vary between professions – as to what latitude is given for the payment of memberships. Again, not having been afforded that information by government, we're left not knowing how this 120-day period will in fact overlap or whether the registration will be separate from the membership fee, which may in fact also be the case. Those are questions that have not been answered.

Section 10 of the bill is proposing the establishment of regulations respecting applications for registration, terms and conditions on the registration of limited liability partnerships, name requirements, fees, and governing reports. That causes me a bit of difficulty. Yet again governance by regulation. It seems to be becoming a worn-out motto of this government and a worn-out model. If we're trying to achieve greater transparency, greater accountability, a greater public understanding and public protection through some of these processes – and the government has been espousing those as reasons why we need the Health Professions Act – why would we leave all of these requirements, preconditions, terms, to be established by regulations? Is that transparent? I would submit that it is not.

Or is it really? I'm beginning to think that the government leaves all of this stuff to regulations because it really hasn't thought through the implementation of many of these bills, and we see that as a common occurrence now. We certainly have seen it in the AISH act proposed in this session. We see it in the Natural Heritage Act, we see it in the Health Professions Act, and yet again we see it in the Partnership Amendment Act. Not good enough, Mr. Speaker, in my books.

The other information that has been afforded oddly enough comes from Ontario. We're aware that Ontario did debate a bill – Bill 6 I believe it was titled – in 1998 that was very similar to the act that this government is now proposing. It seems rather odd that in order to provide descriptive debate on a bill here in Alberta, sometimes you have to go to an outside province to get your material. However, there are many things that Ontario seems to be adopting from Alberta and vice versa, Alberta from Ontario. So in many respects, Mr. Speaker, I think these points will hit home this evening.

One of the sections in the Ontario bill that is of interest – and I am attempting to see if I've missed it or if it just doesn't exist in this bill – is the description of the liability of the negligent partner. In the Ontario bill there was a specific subsection which spoke about the liability of the negligent partner in addition to the "partner not proper party to action," extraprovincial limited liability partnerships. Those are sections which I don't believe are in this bill. Again the question would be: why have some of these areas been omitted? Are there any reasons with respect to that?

8:20

The other concern that I have with respect to the proposed bill generally is: what precedent does it set for limiting liability in professions beyond the professions listed? I think we know that there are professions that naturally have tended to operate more in a single delivery model, and then there are professions that have chosen to operate in a group model. Generally those that choose to operate in a group are most commonly incorporated in some form, and the assets are shared.

So if in fact we're saying that by committing an offence or practising in an unsafe or unskilled manner the liability of other partners in that corporation is restricted, what does that actually mean in terms of the distribution or division of the assets? If the corporation of partnerships has a balance sheet of assets, does this mean that – I don't like to single out a certain profession, but let's just say that one of the physicians in the corporation did something, and a patient died as a result, and there was a lawsuit. Well, in essence this bill would be saying that if those physicians as partners were covered by a limited liability partnership, the lawsuit could only be filed against the negligent partner. But the assets that that partner holds are not his alone. They belong to the corporation of physicians. So are we not tipping the scale? Is there not a climate created that is disadvantageous to the client, the patient, the recipient of the partner services?

Again, as an advocate, as an elected representative on behalf of the public in the province I would like to know the answer to that question. If in fact it means that there is going to be some compromise of someone seeking redress for damage, then I believe that as a representative in this Assembly I should be afforded that information before I have to vote on this bill.

So with those thoughts I would like to conclude my debate at this time. Thank you very much.

THE SPEAKER: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Mr. Speaker. I would just like to very briefly address a couple of the issues that were raised by the Member for Edmonton-Riverview. I'm sure that the sponsor of this bill will more than adequately deal with her questions when we get to committee, but there was reference made to why specific professions were identified in this act. I think it's very important that the Member for Edmonton-Riverview and all members understand that the professions that are identified in this bill are professions that under other legislation are the only ones that have the ability to form professional corporations. Beyond that, all other professions have the ability to form a limited liability business.

The protection that is available to a professional in a limited liability business – for example a professional engineer can form a business corporation, and the liability related to their responsibility is the same as any other limited liability business. It's the assets of the business. The professionals that incorporate themselves as a professional corporation have unlimited liability, not only for the assets of the corporation but for personal assets as well.

The reason why the limited liability partnership is being proposed is that there are in some of the professions very large partnerships. You may have partners in Montreal, partners in Edmonton, partners in Calgary. Under the present structure of partnerships of professional corporations, if there is a problem with a file in a faraway office, a Montreal office for example, all of the partners of that whole partnership share equally in any liability. The reason for something like this is to have a level playing field whereby if the individual professional is found liable, then his professional corporation will not protect his own personal assets. He would not be responsible and lose his personal assets for something that he had virtually no control over by a partner in a faraway office. So that's the reason and the concept behind limited liability partnerships.

I don't know whether some of the other professions that are identified in this bill, particularly the ones that would fall under the Health Professions Act, would ever have a situation where a limited liability partnership would make any sense to them. In fact the bill would require that regulations be passed within each of the respective colleges under the Health Professions Act before there was even any contemplation of them forming a limited liability partnership. Right now they are a legal entity. They have the ability to have a professional corporation. Usually that's done for tax purposes, but they are prohibited by legislation from becoming a shareholder as a professional in a business corporation. Other professions under the Health Professions Act, such as registered nurses, physiotherapists, can and do incorporate themselves as a business corporation.

So that's the distinction, and that's the reason why certain professions are identified and others aren't.

Thank you.

[Motion carried; Bill 34 read a second time]

Bill 25
Insurance Act

[Adjourned debate April 27: Mr. Hancock]

THE SPEAKER: The hon. Member for Edmonton-Centre.

MS BLAKEMAN: Thank you very much, Mr. Speaker. I'm pleased to join in the debate on Bill 25, the Insurance Act. I'll admit that this has been a steep learning curve for me. We've certainly had a fair bit of feedback from people and questions that we've been asked to raise, so I shall do my best to bring those questions forward.

Just a couple of general points on this bill. The bill is trying to modernize the financial regulation of insurance companies and establish market conduct rules for insurance. I don't have a level of ease yet with whether the market-driven rules of conduct are in fact the best rules for the consumer. I recognize that competition is a good thing and that if you really want to get the best customers, deliver the best service, et cetera, et cetera. But we can also find a number of examples in the business world where the practices that have been used were not the best thing for either their workers or for the consumers. So I have not overcome a level of unease about that with this information that has been presented to us, but that may well come.

I also have real hesitation around the number of decisions that are designated to be made through regulation according to this act. Once again I have real problems with that for several reasons. The regulations do not come before the scrutiny of this Assembly. Therefore there's very little opportunity, perhaps none, for public input into how those regulations suit them. That can include industry input as well.

Also, information dissemination. Regulations are not easy to locate, and for most people that are trying to find out how this all works, this is a difficult process to go through and one that almost discourages people from trying to find those regulations and actually get them in their hand and understand what they're doing. I far prefer to see it spelled out in the bill. So that was one of the things I wanted to touch on. I will come back to it because I do have more notes on it.

8:30

I would like to go over a few points on the errors and omissions insurance: the use of the term "broker," privacy issues that are raised in this, and again, finishing off with the regulation-making power.

The financial guarantees, errors and omissions insurance. Now, this act will prescribe coverage for fraudulent acts of an agent as a required extension of a basic errors and omissions insurance policy. Stakeholders have asked that this errors and omissions insurance be located in regulation rather than in the Insurance Act so that it may be more easily adapted to changing market conditions and market experience in the effectiveness of this so-called E and O as a consumer safeguard. I do note that mandatory errors and omissions insurance has been established in several places: Newfoundland, Quebec, Ontario, and British Columbia.

Now, stakeholders have also pointed out that extended coverage through errors and omissions is extremely difficult for agents to obtain and astronomically expensive. There's an additional concern that part of this act would exempt those with a restricted agent's certificate of authority from having to obtain this errors and omissions insurance or from participating in a compensation plan. So this is where I feel it's not in the best interests of the consumer or of the industry. These individuals, such as travel agents for instance, sell insurance as a consequential product or a coincidental product to what their main business is. You know, you can get travel insurance when you book your flight; it's that sort of activity. Frankly, my travel agent, as good as she is, is not an insurance agent and is not up to speed on all the ins and outs, especially when you take a look at the heft of this act. So I think there's a concern that's raised there.

The use of the term "broker." This act is describing the circumstances under which an insurance agent may claim to be an insurance broker. Life insurance agents have brought the issue forward

that the term "broker" is being applied to life insurance agents when it was to apply only to property and casualty insurance agents. Perhaps that could be cleared up with an amendment, but I do think the wording of this section should be clarified so that it's clear.

AN HON. MEMBER: Agreed.

MS BLAKEMAN: Oh, thank you. I have support from one of my colleagues.

AN HON. MEMBER: All of your colleagues.

MS BLAKEMAN: All of my colleagues. I'm so sorry.

The wording of this section should be changed to limit the provision to property and casualty insurance agents only.

AN HON. MEMBER: Calgary-Montrose supports you.

MS BLAKEMAN: Oh, excellent. Well, that seems to have been a popular item, then, Mr. Speaker.

On to privacy. [interjections] Well, as I say, I'm struggling with this, and I'm going from the notes I made.

Privacy is an issue that I'm always concerned about, especially when we are collecting personal information on people and keeping it in any kind of a data base, especially a computer data base. It raises warning bells for me. We have a section in this act that's requiring "every holder of a certificate of authority . . . [to] provide the Minister with information and copies of any document in its possession relating to insurance activities," and a separate section stating that the cabinet may make regulations "respecting the confidentiality of information obtained by insurers, insurance agents or adjusters."

There's a concern here that by allowing the banks, Alberta Treasury Branches, credit unions, these other deposit-taking institutions access to the claims information under the restricted licence, they will also be obtaining information that a claimant may not want them to have. The public is getting a bit more aware but still isn't totally aware that when they fill out name, address, telephone number, postal code, marital status, et cetera, that information might end up being used in more than one place, more than just what they're using it for. I think it's important that we continue to be vigilant around this issue.

I think there's also a corresponding concern from the insurance industry that financial institutions may be able to access such information to attract new clients. So there's a bit of competition there about who's getting the information, why, and for what purpose they are going to be using it. There's a concern that such information will contain a client's personal information and spending habits. Goodness knows there are enough schemes out there to track spending habits, which is of immense interest to anybody in the marketing business. I think there's a concern amongst consumers that this information could be passed or, heaven forbid, sold to any kind of third party.

Now, financial institutions believe that requirements on financial institutions to seek written consent for disclosure of information from customers would be sufficient to address this. I know that even in some magazine subscriptions there's a little box on there that you can tick off: I don't want my name included on any list that might be given or sold to anybody. That should be enough to hold them to it and make them honest about it.

Insurance industry stakeholders are recommending that client information be protected by regulations respecting confidentiality of information that are as stringent as the regulations that apply to information obtained by the insurance agents. They seem to be recommending that the scope be expanded so that the minister, upon receiving client information, is subject to any regulation that is made "respecting the confidentiality of information obtained by insurers, insurance agents or adjusters."

So it's an issue that keeps coming back in front of this Legislature, and I think it's incumbent upon us as legislators and as stewards of this beautiful province and all of the assets in it and looking out for the people to be on our guard on that one.

Now, regulation-making powers. There are a dozen or more sections in this bill that are giving provision for the cabinet to make regulations. I'm going to run through a list of them because I think it's important that we understand how much in this bill is now being delegated to the cabinet to make the regulations: the amount of the base capital for life or property and casualty companies; the maximum proportion of risks that may be insured with unlicensed insurers; the requirements, conditions, training, and experience that must be met before a special broker's licence is issued or renewed; the terms and conditions imposed on a special broker's licence; the business that a provincial company may engage in or carry on; demutualization proposals and procedures and requirements that must be met before a mutual provincial company may be converted into a provincial company with common shares; the quantitative limits on investments that may be made by a provincial company or its subsidiary; the terms and conditions subject to which a provincial company or its subsidiaries may make investments or enter into other transactions; transactions that may be entered into with a related party with the prior approval of the directors; the compensation plan for the purposes of compensating persons who have suffered a loss as a result of fraudulent activities of insurance agents and adjusters; the classes or levels of certificates of authority and the setting out of the limitations and restrictions attached to each class or level of certificate; the terms and conditions that may be imposed on a certificate of authority; the claims settlement practices of insurers; insurance marketed through electronic media, and that's a huge area that I think we need to be particularly careful of; the form and content of notices of administrative penalties and the amount of the administrative penalties that may be imposed; the continuation and licensing of special act companies under the purview of Bill 25.

That's a vast difference of control that is being delegated through regulations covering a huge field and, I think, affecting again both the industry stakeholders but also the consumers. [interjection] Right; I'm coming to the end of it. [interjection] Thank you for the encouragement.

8:40

The stakeholders believe that the use of regulation-making authority is an efficient method of dealing with the continually evolving industry. They support a provision in the act which would ensure that the public and stakeholders are informed of any changes in the regulations before they are implemented. I agree, although I would prefer to see it come before the Legislature and actually be debated. Although I suppose if this is what the stakeholders and consumers are willing to accept, okay, but I would still prefer to see it before the Legislature.

In addition, they're asking that they be provided with an opportunity to make presentations on those proposed changes. So that's really what they're asking for: "What would be in the regulations? Let us see it in advance, and let us have an opportunity to debate it and give feedback on it." And I agree with this. At a minimum, I would say, I would prefer to see, first of all, if it is going to be in regulations, that there be a Law and Regulations amendment as part of this and that we see these regulations go before the Law and

Regulations Committee, a very useful committee which does not seem to find favour with the government. Indeed, we have a chairperson of that committee that has so far been denied the pleasure of being able to chair it, which is just a real shame.

Those are the notes that I have at this time on this bill. I'm looking forward to listening to the rest of the debate on it, because this is an important part of our life that I think a lot of us don't pay enough attention to. To have this massive of a rewrite, probably well needed and timely, it needs careful consideration. I look forward to the thoughtful debate that will follow and certainly to the progression of this bill through Committee of the Whole and, I'm sure, the amendments that will be forthcoming to clarify the bill.

With that I will take my seat and pass the torch to another of my colleagues that I know is itching to speak to it. Thank you, Mr. Speaker.

THE SPEAKER: The hon. Member for Edmonton-Norwood.

MS OLSEN: Thank you. I appreciate the opportunity to speak to this bill. As many of my colleagues have said before, I'm sure this bill weighs about one pound, and hopefully this 418-page bill will be one of the biggest we see coming forward. I wouldn't want to have to manoeuvre too many more of these bills from that side through the Legislature.

MR. DICKSON: It's thicker than the Drumheller phone book.

MS OLSEN: Is this bigger than the Drumheller phone book? It is.

AN HON. MEMBER: It's three times as big.

MS OLSEN: Is it?

Mr. Speaker, I want to address a few issues here, and I have some concerns that I'd like to bring forward on behalf of the Member for Spruce Grove-Sturgeon-St. Albert. There were some concerns from constituents there, and some of that was to do with the eligibility for sole or primary occupation. One of the complaints was that the bill no longer contained a provision for the sole or primary occupation as a requirement for licensing. It was felt by this individual that this opened up the industry to those who are not committed and could lead to employees of financial institutions being licensed. I've heard that myself from a number of constituents who were involved in the insurance business. One individual felt that the present system is working well for the licensees and protects the insurance consumer and is wondering on what basis this particular section of the act is being changed.

I understand that the government has made this move believing that prohibition against insurance agents engaging in other occupations is anticompetitive and a barrier to new agents entering the insurance business. I think there's a lot of these different marketing strategies that are employed by the insurance industry, and I think there is a turnover in this industry. You certainly have banks trying to move into the field. You have companies such as Primerica interested in the insurance business, and in fact they sell mutual funds. So you wonder where you want to draw the line. However, the issue is certainly worth discussion and is a concern from industry representatives.

A second concern was an individual belief that all intermediaries should be individually licensed under the Insurance Act and recognizes that the bill will require deposit-taking institutions and travel agents to be corporately licensed. It's good to see the act provide for fines and licence suspensions, but what another individual said is that in their view it's very difficult to conceive that the CIBC, for instance, would be given a heavy fine or lose a licence as a result of some behaviour on behalf of one of their employees.

The other issue is that it's important to be aware that federally regulated insurers license their sales force in Alberta. So what they're asking is: why, then, should employees of financial institutions be exempt from this? More a question, too, that would be nice to see answered when we move on to Committee of the Whole.

Another concern is that this move by the government is concerned with protecting the insuring public and will require mandatory errors and omissions insurance and the establishment of a consumer protection fund. An individual felt that these provisions are beneficial but doesn't feel that they're stand-alone provisions and have substance as they stand by themselves. These measures will aid the consumer only after the loss has occurred, and a requirement for primary occupation would eliminate or minimize losses before they occurred. Again, you know, sometimes we have to look at legislation and say: well, what's the purpose and intent? Certainly some form of prevention and some legislation that addresses that is a concern. I guess what some constituents are asking for is to ensure that there is a level playing field for all licensees.

Those were some concerns brought forward by some constituents from Spruce Grove-Sturgeon-St. Albert. I'd like to move on to a couple of other issues in the bill.

One of the concerns is the certificate of authority. This section gives cabinet authority to make regulations respecting the requirements that must be met before certificate of authority is issued or renewed and to impose terms and conditions on a particular certificate of authority while it is in force. Well, again we're looking at the regulatory aspect of cabinet. Now, I'm going to step out from there and suggest that my position is generally that government by regulation should be limited. It shouldn't be the norm. It shouldn't be the standard of how business is done. However, in this particular instance, if cabinet is going to have that particular power, then I would recommend that the act be amended to include an additional authority to make regulations respecting the continuing requirements and conditions that must be met by the holder of a certificate of authority after it has been issued or renewed and to include a further authority authorizing the minister to suspend, revoke, or refuse to renew a certificate of authority for the breach of such continuing requirements or conditions.

I don't think that's an unreasonable amendment. It's all fine and dandy to say what should be or what shouldn't be, but there has to be the power to do something about that. I don't think it's responsible legislation when there isn't a power or an ability to go into the negative and suspend, revoke, or refuse to renew a certificate of authority. So I think that's something for consideration.

8:50

Sharing compensation: that's another issue. Sharing compensation with an authorized individual is a concern to stakeholders since it opens the door to allowing unaccountable individuals lacking the required skill and knowledge to take control of an insurance transaction for personal gain, contrary to the interests of the consumer. Well, I think one of the things that we have to be cognizant of is people's ability to do a job and, when they're in a profession, that they maintain a level of professionalism and standards that in fact are reflective of their knowledge and what the industry would be requiring.

In my view, the government believes that the market should dictate how compensation is shared. Financial intermediaries such as the insurance agent or securities broker should be permitted to enter into partnerships where referral fees and profit sharing are possible. The stakeholders, on the other hand, believe that sharing

of agents' compensation should be prohibited except when the agent shares a commission with another insurance agent who holds a licence to sell the class of insurance for which compensation was paid. Again, a recommendation for an amendment regarding the prohibition against sharing compensation to specify that a commission, compensation, or anything of value may only be paid to an insurance agent who is authorized to act as an insurance agent for the class of insurance in respect to which the payment is made.

Really, you don't want people who are not qualified and who are without the skill and knowledge to act as an insurance agent at a given level. It would be like me suggesting that security guards go and perform a function of a police officer without them having the background, knowledge, and training to do that job. I can assure you that there will be some fallout from that which would be in the negative and certainly opening up the door to liabilities. I'm not sure that in this industry or any industry we want to get into a more litigious society.

Another issue is the antirebate provisions. The act prohibits insurers from charging premiums other than as stated in the contract of insurance. However, the act removes a provision in section 520(4)(b) of the current Insurance Act that prohibits rebating of the premium of a policy "or any other consideration or thing of value intended to be in the nature of a rebate of premium." The government believes that allowing – and this is my perspective – the giving of rebates on insurance will ensure that consumers are able to benefit from price competition. Now, we have the government position on one hand and then we have the life insurance agents strongly opposed to removing the antirebating rule. The current prohibition is a well-established market conduct practice based on the principle that a company should not practise unfair discrimination between individuals presenting the same risk. It was not conceived as a form of price-fixing or anticompetitive measure.

Premiums are based on actuarial considerations and should not be open to competition, which would undermine pricing consistent with insurers holding appropriate reserves. Life insurance agents that we've heard of on this side of the House are recommending that section 501 be expanded to retain the specific antirebating provision found under section 520(4)(b) of the current Insurance Act.

I'd like to move on and speak to the issue of unfair practices in the bill. Section 509(1)(c) prohibits "unfair, coercive or deceptive practice" but fails to define what those practices are. Well, when you have legislation – and certainly one of the first things that I was taught when I started to understand legislation, how it was written, and how it was to be interpreted as a police officer in criminal law courses is that if you don't find the definition in the act, then you have to go to other sources. You go to the next source up, so I might be looking in the Criminal Code. If it's not there, I might have to look in the dictionary and take a standard definition from there. The problem with using the dictionary is that it sets out a definition, but does that definition in fact fit with the context of the act?

So I think that's an issue, and many stakeholders in fact believe that "unfair, coercive or deceptive practice" is too broad. They're proposing an amendment – I think they've already discussed that – to specify what is entailed. Again we get back to the issue of discussing the meaning of these particular words prior to regulations being passed. Given that that sits with cabinet, I again voice my concern about government by cabinet and not bringing a lot of these issues to the floor of the Legislature.

I'd like to move on to the issue of licensing of staff adjusters. Section 460(4) of the proposed act requires that staff adjusters be licensed through an adjuster's certificate of authority; those are the employees of the insurers. An employee of a licensed insurer who acts as an adjuster only with respect to prescribed types of claims will not be required to obtain a licence. The insurance companies and a stakeholder group would like to see the staff adjuster licensing provision removed from this bill. They believe it is redundant, given that the insurance companies that act as adjusters are already required to have a valid adjuster's certificate of authority. The additional licensing requirement represents an increased cost to insurers that would be passed onto customers.

I guess what I would want to know is: why would we be licensing? I guess the Provincial Treasurer can look at that in his discussions about the cost of that licensing and when he looks at the Eurig decision out of the Supreme Court of Canada. Here is just another issue that he's going to have to address. Why add to the stack? Why make life a little more difficult than it is? We have user fees in here and other premiums and fees in the area, I believe, of about 1,300 already. We're just creating more, so I think that's a question the government has to ask themselves.

I guess my concern would be that this bill is very comprehensive, and if we're going to look at the amendments to the Insurance Act now, we might as well make sure we do the right thing and get it all right and appease as many of the stakeholders as possible. I think that would certainly be the right thing to do from our perspective. We don't want to have to see this particular act come back at another time, where we're either amending through miscellaneous statutes or have to bring another substantive bill before the Legislature to amend because we didn't get it quite right.

9:00

Another section that I think we need to have a look at is actuaries. Section 161(2) imposes the requirement that an amalgamation agreement submitted to the minister for approval be accompanied by a report of an independent actuary with respect to the agreement. However, it does not provide any indication of what aspect of the agreement the actuary is required to provide an opinion about in the report. Actuaries recommend that subsection (2) or regulations set out the matters to be addressed by the independent actuary's report.

Section 395 of this bill requires that an actuary of a provincial property and casualty company "be approved by the Minister as having the training and experience that are relevant to the duties of an actuary of a provincial company." While I understand that the intent of this provision is to permit the minister to allow suitable persons to make the determination of liability amounts for small Alberta insurance companies with a straightforward claims book, actuaries point out that the complexity of the insurance business increases the likelihood that a nonactuary would improperly value the obligations of an insurer, far outweighing the relatively minor cost of the actuarial consulting fee.

So, again, we're providing guidance, but it's limited. We're not setting out what the actuary is actually required to provide an opinion on. That seems to me to be a huge gap, and I would wonder why in fact we wouldn't want to identify what it is that the actuary is looking for. Again, this may be done in regulations, but I think that's an R word and in this Legislature has been used far too frequently and might be added to the list of unparliamentary words, Mr. Speaker.

Regulation-making power. It certainly is something that in my view, given the power that the minister has, in some way usurps the authority of this Legislature. I think it's an inappropriate way to do business as a government. When we're all elected here to debate issues, some of those issues that this government might find inconsequential in fact are not, and they should come to this floor of the Legislature to be debated.

I believe with that, Mr. Speaker, I have exhausted my concerns about this bill, and I will pass on the torch.

THE SPEAKER: The hon. Member for Edmonton-Mill Woods.

DR. MASSEY: Thank you, Mr. Speaker. I appreciate the opportunity to make some remarks about Bill 25, the Insurance Act, at second reading. This is a major rewrite of this act, which was first passed in this Legislature in 1915. There have been amendments over the years, some major amendments in 1996, but this is the first really major overhaul of the act, and it's not complete. We'll have part 5 as a follow-up to what we have in front of us today.

I'd like to spend a few minutes looking at some, certainly not all, of the underlying principles, some of the basic ideas that seem to have guided the rewrite or that may be concluded to be supported if you look at the details of the rewrite. Of course, we get a chance to do a closer examination of the details at the committee stage.

There seems to be great concern in the rewrite, and I think appropriately so, that there is need for market conduct rules for the insurance industry and, closely coupled with that, a principle that there is a need to ensure that consumers are treated fairly. Those are principles that I think we would all agree are worthy of any legislation of this nature. That principle is supported in a number of places in the bill. It's supported where there are provisions governing the conduct rules respecting insurers, agents, and adjusters, the rules that are in the bill to try to prevent deceptive practices and make sure that consumers are treated fairly by sales representatives, and provisions that will make settlement practices much clearer and the rules for those settlements understood by all.

The provisions that consumers should not be charged premiums and fees without prior knowledge support that principle that consumers should be treated more fairly, as do the provisions that if the insurer terminates a contract of insurance, the insurer must pay to the insured a refund of the premiums and that there be a protocol established for the repayment of those premiums, again a consumer protection provision of the bill, along with the provisions that would prohibit agents from making false or misleading statements or representing their products in advertising in other ways or using deceptive practices in selling insurance to mislead consumers. So some strong moves in terms of trying, again, to protect consumers.

The provisions for telemarketers are interesting because that brings the bill into the '90s. That's for certain. They are going to be required to disclose the identity of the insurer and the policy exclusions relating to insurance sold by electronic means. Particularly important and something we've debated at other points on other bills in this Legislature are the provisions on negative-option practices. They would be completely prohibited. Telemarketers that try to use those kinds of devices to gain consumers will find that they are treated rather severely. So it's a good provision and, again, one that supports the principle that there's need for market conduct rules for the insurance industry.

This is, again, another provision that we have included in other bills that we have debated in the Legislature, and that's that life insurers will be required to give consumers or policyholders a cooling-off period on the sale of non interest-sensitive life insurance policies so that there's a chance for the consumer, away from the enthusiasm of an agent or a seller, to rethink the decision to purchase and to in fact, then, on second thought, revoke a decision that might have been made to make a purchase. I think that's a sound and a good provision to have and, again, supports the principle that the consumer should be treated fairly.

9:10

Just one more example of provisions in the bill that support this principle is that the government will implement privacy rules respecting the client's personal information to ensure that the personal information of people involved in these transactions is not passed on to others who could use it for a variety of interests. Again, a provision that is in the best interests of consumers. It's a principle that has been used to build the bill, Mr. Speaker, and I think it's a sound provision.

There are a number of other principles. The next one I'd like to look at is that the bill puts forward a need for and supports the principle that there has to be a licensing framework for insurance agents and adjusters and that that framework will result in the certification of these individuals. That principle is supported, again, in a number of places in the bill but particularly in the sections that deal with insurance agents and adjusters. No business or individual will be able to act as an insurance agent unless they hold a valid insurance agent certificate or authority. So they're going to have to be licensed; they're going to have to hold certificates. I think that that's in the best interests of the consumer and the industry.

To gain those certificates – they just won't be available to anyone that wants one – they're going to have to meet prescribed criteria through the passing of insurance examinations, and they're going to have to have certain personal characteristics that make them eligible for a certificate. They won't be eligible for a certificate if they've been convicted of a criminal offence, and those who are undischarged bankrupts will not be eligible for a certificate of authority. Again, this is trying to ensure that those agents and people who are offering financial products are qualified to do so and gives some assurance to purchasers that they are dealing with reputable individuals and with agents that have the confidence of the industry they represent.

There's a loosening of the regulations. It no longer will require insurance agents to not engage in other occupations, except in an occupation that might find that agent in a conflict of interest. Again, it's part of the licensing framework that has been proposed.

One more example, a fourth example, is that members of a licensed fraternal society will be allowed to act as an insurance agent, at least with respect to the insurance offered by that particular society to its members. So, again, the principle that insurance agents and adjusters should be certified, that there should be in place a system of certificates, that there should be some personal qualifications for those people who offer themselves as agents and adjusters is an underlying principle that has been developed in the bill.

One of the other principles that has been developed is the need to ensure the adequacy of the assets and the capital and the liquidity of the investment and the investment portfolios of companies and insurers offering products. That, again, is supported by a number of specifics in the bill. One of the more important ones is that it establishes the minimal capital adequacy standard as a cushion against operating losses to protect policyholders. That's an important provision, that policyholders are assured some protection and that there's going to be put in place a test for companies to make sure that they in fact are in a position where they have the assets and the capital and the liquidity to carry on business and to actually deal with the claims and the concerns of the customers that they have engaged in contracts with.

A second provision in the bill that supports that is a look at the kinds of investment portfolios that companies develop, the principle being that a prudent portfolio is the investment portfolio that will be expected of companies, so the care in terms of the operations of the companies themselves in putting together investment portfolios. There's going to be an examination of those portfolios and an examination of the policies that a company should consider or has considered in putting together a balanced portfolio to ensure that the risk to the consumer is minimized.

One further principle is embedded in the bill. It seems that there's

a need for a system to compensate citizens who've suffered a loss as a result of fraudulent activity of an adjuster or an agent, and I think that consumers will applaud this provision in the act. Again, a couple of specifics support that principle. There's going to be a compensation plan put in place. It's going to be established through regulation, but it will be established to cover the fraudulent activity of an agent that is not covered by an insurer or a designated representative. So there will be again some consumer protection.

A second provision that supports that principle is that the act prescribes coverage for fraudulent acts of an agent as a required extension of a basic errors and omissions insurance policy. So they're going to ask the industry to make sure that consumers, purchasers, are protected by having in place funds that can compensate them should they be victimized by the industry through the deeds of an agent.

So those are a number of the principles. There are a number of others, Mr. Speaker, that obviously have been influential in developing the act. The notion that deposit-taking institutions should be able to handle insurance products is an extension to the abilities of those institutions. As I said before, the principles concerning consumers have been developed rather extensively, and there are several others that the act includes.

So with those comments, Mr. Speaker, I'd conclude my remarks and look forward to looking at the details of the bill in committee stage.

THE SPEAKER: The hon. Member for Edmonton-Meadowlark.

MS LEIBOVICI: Thank you, Mr. Speaker. It's a pleasure to rise here tonight to address the Insurance Act, Bill 25, in second reading. In taking a very detailed look at the principles of the bill, it struck me how some of those themes that we have seen in other pieces of legislation in this provincial Assembly carry through to this particular bill as well.

9:20

When I look at the drafting and how the drafting is anything but plain language, it is difficult to believe that at one time this government did in fact say that legislation was going to be drafted in plain language so that anyone who wished to pick up the act could in fact understand all of the intricacies of a piece of legislation. I look at the claim that the government has with regards to transparency and openness and then see that some of the major issues that are still to be resolved with regards to the Insurance Act will be done through regulation. In fact the stakeholders themselves have indicated that they would like to see what some of those regulations are so they in fact know whether the intent of the act will be carried out in the regulation part, the part that's made behind closed doors, the part that there is no public or stakeholder input in at all.

In fact, when we look at some of what will be in regulation – I listened very intently to the list that the Member for Edmonton-Centre read out, and I will not repeat that list. When you look at one or two of those items, for instance the compensation plan "for the purposes of compensating persons who have suffered loss as a result of the fraudulent activities of insurance agents and adjustors," when you look at the fact that the list of prohibited occupations that you think would be part of a piece of legislation that looks at allowing and opening up insurance agencies from engaging in more than that as an occupation would be left to regulation and without any discussion with the industry as to what that regulation would be, that I think is a lack in terms of the bill.

When you look at the issue of consultation – and again this is an issue that this government says over and over again that they do in developing a major piece of legislation such as this one is. One would have thought that there would be consultation not only with selected stakeholders but especially with the public and especially with consumers, and in fact it is our understanding that that has not occurred.

When you look at a major piece of legislation such as this that deals with an item such as insurance, which is a part of our everyday life – there is nowadays very little that one does without having someone there ready to sell you a policy that will guarantee that you will be covered. You look at disability, you look at house, you look at car, you look at life, and you look at travel and, even as this province moves more and more towards private health care, medical insurance. In fact those are the very items that the consumer and the consumer associations have not had input into. In looking at who has been consulted, I wonder whether the Department of Municipal Affairs and the consumer affairs section within the department was in fact consulted as to what the basis for forming this legislation should be.

I recognize that the Insurance Act did have to be modernized, that the Insurance Act has not been looked at for quite a number of years. In actual fact this is the first major rewrite of the act since 1915. So I understand that that is a huge, huge task. But in undertaking that task and in having approximately five years to do that task, one would assume that all the bases would have been covered, that in fact some of the key issues that are troubling consumers these days with regards to the role of banks and the role of insurance agencies in the selling of insurance would have been addressed within this bill and there would have been a clear statement from the government through this bill as to what the government's position was.

Bill 25, it is my understanding, focuses on two major aspects. One is the modernization of financial regulations which govern the operations of insurance companies, and the other deals with market conduct rules for the distribution of insurance within our province.

A major portion of the bill, however, is not being addressed, and that is part 5. Here we have a part of the act that deals with insurance contracts which will not be addressed in the passing of this bill. You would have thought, Mr. Speaker, that in fact when you are introducing a major piece of legislation, with that introduction – and it did take five years, and perhaps it needed to take six years to get it right. What should have occurred is that part 5 should have been discussed and debated and put forward at the same time as opposed to having been plucked out of the whole. So we are passing a piece of legislation that is part of an act that is 80 years old and legislation that is new, and one would wonder if in fact there are not some discrepancies and inconsistencies with having two parts that are not in sync with each other. So that in effect is perhaps a flaw that we will see as this bill moves forward and is potentially implemented in the future.

It's interesting to note that other jurisdictions have had task forces that have looked at the future of financial services, either on a federal basis – the MacKay report, which we are all I'm sure quite familiar with, dealt with the future of the financial services sector, in particular looking at the role and potential merger of some of the largest banks in this country. At the same time British Columbia set up a task force as well that looked at what the citizens, the consumers, the people who are most affected by insurance would wish to see with regards to the delivery of services in the financial services sector. Insurance has become part of that method of distribution. As I indicated earlier, that in fact did not occur. What we have therefore are some very strong concerns with this bill that come from the perspective of consumers within this province.

The issues that needed to be addressed and were not addressed were the claims process for credit and travel insurance products,

extended warranties, the renewal process, limitation on claims, privacy of information, and an effective dispute mechanism. We can keep our fingers crossed and hope that in the second phase of looking at the Insurance Act these considerations will be not only considered, but there will be active consultation with the consumer groups and consumers within this province.

The reality is that we see also a shift here with regards to the potential role of the Alberta Insurance Council as noted within Bill 25. What we see is that the Alberta Insurance Council is at this point a delegated authority, and it may in fact move to being an authority that's self-regulated. Given the concern that the Official Opposition has had with the move from delegated authorities to self-regulated and the lack of overview, the lack of oversight by this government with regards to authorities that are self-regulated, I would hope that there will be some effort made to ensure that if that move did occur, there would be a process to evaluate how that affects the insurance industry, how that affects the effectiveness of consumers when they have complaints with regards to the insurance industry, and how in fact consumers' interests are protected. I believe one of the major components should be, amongst those that I noted earlier, to ensure that the consumer is protected, because if in the drafting of this legislation there are holes that provide for individuals to take advantage of a consumer in a situation that they can be in that is potentially vulnerable, in fact we have not done our job as legislators within this Assembly.

9:30

The reality also is that there are issues that remain with regards to – and I know that some of my colleagues have touched upon a number of issues dealing with the privacy, the antirebating provisions, compensation sharing, certificate of authority, use of the term "broker," financial guarantees, unfair practices. These are concerns that are embedded in the drafting of this legislation, and hopefully at the Committee of the Whole stage we will see some of those concerns being addressed.

Another concern, which I think the Member for Edmonton-Mill Woods touched upon a little bit, is the restricted insurance agent's certificate of authority. What this bill permits is:

> The Minister may issue a restricted insurance agent's certificate of authority to a business
>
> (a) that is a deposit-taking institution . . .
>
> (i) a transportation company,
>
> (ii) a travel agency,
>
> (iii) an automobile dealership, or
>
> (iv) another prescribed enterprise.
>
> (2) A restricted insurance agent's certificate of authority authorizes the holder . . . to act . . . as an insurance agent in respect of classes or types of insurance specified by the Minister.

Now, it's interesting to note that currently loan and trust corporations, banks, ATB, and credit unions are permitted to distribute certain limited types of credit-related products in their branches. These products are in turn sold to credit union customers without an individual assessment of risk. Under the act the loan and trust corporations, et cetera, will be required to obtain a licence to sell this limited range of credit-related insurance products. Although there is no provision in the Insurance Act that will allow deposit-taking institutions to underwrite and sell insurance through their branches, industry stakeholders are concerned that because the terms and conditions of the restricted agents' certificates are left to regulation, the door may be open in the future for provincially regulated institutions such as the ATB and credit unions to market insurance products directly from their branches.

Though there may not be the provision in the Insurance Act to allow the DTIs, the deposit-taking institutions, to underwrite and sell insurance through their branches, the restricted certificate of authority may allow them to do that. In fact, there are no indications in Bill 25 as to what types of limited insurance products DTIs such as ATB, banks, and credit unions will be able to distribute since then this is a subject of regulation.

Now, I think it behooves the sponsor of this particular bill to indicate whether the DTIs will be permitted to distribute the following classes of insurance as part of that registered certificate: credit or charge card-related insurance, creditors' disability insurance, creditors' life insurance, creditors' loss of employment insurance, creditors' vehicle inventory insurance, export credit insurance, mortgage insurance, travel insurance, and whether there's any possibility that there may be others that might be addressed under Bill 25. There's also an issue that requiring banks to obtain licences on a corporate basis if they offer insurance products is maybe unnecessary, is maybe inappropriate but might well result in regulatory overlap and duplication and conflict with federal legislation in the Bank Act.

Now, if there are concerns like that with the stakeholders who have been consulted – and this is just one example. We have heard over the last hour and a half numerous examples from other members of the Official Opposition, who have pulled out sections within the act and have talked to some of the principles within the act as to why there are concerns with regard to this bill. Though on the whole the bill has tried to address and to update and to expand and to be forward thinking with regard to the insurance industry, because it is such a huge bill, there are bound to be some pieces that have been overlooked. There are bound to be some situations that have not been totally covered.

I would hope that in fact we will see the concerns that have been brought forward with regard to the bill addressed at some stage in the future. It needs to happen, because if not, all the good work that has been done by the hon. sponsor of this particular bill and others that preceded her in putting this particular bill forward may well be for naught. It would only take one or two instances, one or two examples of where the bill does not address some of the situations that we have brought up within this Legislative Assembly for there to be a lack of confidence in the bill, in the principles of the bill, in the understanding of what the bill is to bring forward. So based on that, it is extremely important that some of what has been addressed this evening is further addressed by the sponsor of the bill.

So if I can just reiterate what some of my concerns are with Bill 25, the Insurance Act. The principle of looking at a bill and of ensuring that the bill is updated is a good principle. It is one that obviously needed to occur. What is questionable is the extent of the consultations that took place that resulted in the bill, the actual drafting of the bill and whether in fact that drafting is as simple as it can be and addresses all of the issues, the fact that there is a lack or a perceived lack of transparency with regard to some of the powers that are provided to the government in making regulations and that that may be contrary to what the intent of the bill is, and that we must take into account that this bill is one that will affect each and every one of us and each and every one of our constituents throughout the province. Hopefully that effect will be a positive effect for all.

Thank you very much.

THE SPEAKER: The Member for Edmonton-Beverly-Clareview.

MR. YANKOWSKY: Thank you, Mr. Speaker. I rise to move that we adjourn debate on Bill 25, the Insurance Act.

THE SPEAKER: All hon. members in favour of the motion to adjourn debate, please say aye.

SOME HON. MEMBERS: Aye.

THE SPEAKER: Those opposed, please say no.

SOME HON. MEMBERS: No.

THE SPEAKER: The motion is carried.

9:40 **Bill 22**
Health Professions Act

[Adjourned debate April 27: Mr. Hancock]

THE SPEAKER: The hon. Member for Edmonton-Norwood.

MS OLSEN: Thank you, Mr. Speaker. It's a pleasure to rise this evening and speak to Bill 22, the Health Professions Act. What this bill purports to do is combine 30 health care professions under one single act. It eliminates exclusive scope of practice from any profession and replaces it with a list of restricted activities which would jeopardize an individual's health and sets out who can perform these activities.

The professions which will be able to perform these restricted activities will be established through regulations. The regulations will include what training is needed to perform these activities. This bill also spells out registration, disciplinary and continuing competence procedures for all health professions, and it provides for the Ombudsman to look at the procedures followed by a college of health professions in dealing with the complaint.

Now, I would like to draw the Assembly's attention to a report. That report was entitled Principles and Recommendations for the Regulation of Health Professionals in Alberta: Final Report of the Health Workforce Rebalancing Committee. I have only the copy that I got out of the library, Mr. Speaker, so I can't table anything, but surely if anybody's interested in knowing where the quotes come from – and I know that the hon. Member for Lesser Slave Lake over there is really interested – it's in the library for your reading at your leisure.

However, the letter that was dated November 3, 1995, which indicates to me that we have a report that has been in the making for somewhere in the area of four years, was penned by the Member for Medicine Hat.

[Mr. Boutilier in the chair]

My goodness, we have had a change of face up there in the Speaker's chair. Doing a fine job, doing a fine job.

When this committee was established, they were asked to

> review the current system for regulating health professionals and propose changes that would
>
> (i) protect the public through affordable and appropriate standards
>
> (ii) improve choice and access to health providers for consumers, employers and communities
>
> (iii) eliminate unnecessary regulations such as exclusive scope of practice provisions which grant certain professions the exclusive right to provide or control health services
>
> (iv) ensure a more consistent, equitable, user-friendly structure for regulating professions
>
> (v) recognize self-governing professional associations and regulatory bodies and ensure they are accountable and responsive to the public they serve
>
> (vi) promote collaboration and more effective partnerships among health care providers, professional standard setting bodies, consumers, employers and governments.

Also, part of the mandate was to "review alternative approaches to the provision of health care services, including a review of funding systems." That says a lot, Mr. Speaker. That says a lot in very few words. In fact, that tells me that there was certainly an aim to go down the road of private health care and that this review is the start of that.

I want to draw your attention to some of the principles for change that were recommended. There were five principles to guide change in the regulation of professional practice and the regulatory system for health professions in Alberta, and that was contained in the report that was written in 1995.

> 1. The public must be protected from incompetent or unethical health professionals.

I'll bet we have a lot of those people. What do you think? [interjection] I doubt it.

> 2. The health professional regulatory system should provide flexibility in the scope and roles of professional practice so the health system operates with maximum effectiveness.

If you think that we have a lot of that, I would suggest that the health professionals in this province are flexible and try to ensure that the system operates with maximum effectiveness.

> 3. The health profession regulatory system should be transparent to the public. Information about its workings and purpose should be both credible and easily available to Albertans.
>
> 4. The regulatory process for health professions must be demonstrably fair in its application. The principles of natural justice must be observed throughout and decision makers should be accountable for decisions they make.
>
> 5. The health regulatory system must support the efficient and effective delivery of health care services.

It goes on, Mr. Speaker, to talk about some recommendations, and I want to talk about the first recommendation that came out of this report. I want to spend some of my time, in fact probably the bulk of my debate, in this specific area because it's of some concern to me. That's a delegation of self-governance. This report, that was penned in 1995, suggested that

> this recommendation reaffirms the fundamental principle . . .

This is for delegation of self-governance.

> . . . that the authority for professional self-governance is a delegated authority. This authority is delegated by government only when it is in the public's interest to do so and when the profession can demonstrate that it has the resources, structures and commitments to carry out those delegated responsibilities. When professional self-governance is delegated to a professional association, the mandate of that association must clearly serve the public interest. Professional self-governance as envisioned in this report would not be delegated to associations with other mandates, such as a trade union with a mandate to serve the interests of its members in collective bargaining.

Well, you know, I look at that and I become concerned. We're talking about the number one recommendation of the Health Workforce Rebalancing Committee, which recommended that

> Professional self-governance is not a right, but a privilege and should only be delegated when:
>
> - it is in the public interest to do so;
> - there is an organization capable of undertaking the responsibilities of a regulatory body or college; and
> - appropriate accountability measures, including a program for promoting continued competency, are in place.
>
> In assessing whether delegation of self-governing authority to a new professional group is appropriate, consideration should . . . be given to alternatives, such as combining several related professions under one regulatory structure.

That leads me into some of the discussion I have had previously in this House about delegated authorities. I wonder, with this particular recommendation, if the government has given this same kind of thought to other delegated administrative organizations,

other delegated authorities, such as the Petroleum Tank Management Association and the Alberta Boilers Safety Association. If I can go back to this recommendation, is it in the public interest to do so? The Alberta Boilers Safety Association regulates the manufacture and use of pressure boilers and pressure valves in this province. We have seen what has happened as a result of that delegated authority becoming a self-regulating body. We find out that the Alberta Boilers Safety Association doesn't have the manpower to inspect the tanks and the pressure boilers and pressure vessels, and I would suggest that the hon. Member for Edmonton-Gold Bar has brought this up time and time and time again. So did they apply the same standard for that particular DAO as they did when they looked at the professional self-governance model?

How about the Alberta Elevating Devices and Amusement Rides Safety Association or the Tire Recycling Management Association? The Safety Codes Council and the Occupational Health and Safety Council operate DAOs. Has the government decided that these particular authorities reflect the same structure and the same recommendation, the articles outlined in recommendation 1? I can assure you that if the government thinks that's the case, then they need to look at the Auditor General's report, which says that that isn't the case. There are a number of issues with the delegated administrative authority model in Alberta, and there are definitely some pitfalls. So I think if this particular notion is to apply to one sector, it has to apply to another sector.

9:50

We know that there are a number of pitfalls within that specific process with the DAOs, and that particular model must in fact follow this recommendation as well. Is it in the public interest to in fact have a DAO? Is there an organization capable of undertaking the responsibilities of a regulatory body and appropriate accountability measures? You know what, Mr. Speaker? We've identified previously that that's not the case for the DAOs that I outlined and that I have outlined in the past. In fact, I have made several concrete recommendations to the Minister of Labour to deal with that. At this point he has failed to do that. He has failed to follow an established framework. So I just wonder why this is all good for one group and the government thinks that the DAOs are going to enhance services in one area. But when it comes to other regulating bodies, it's not okay.

In fact, I have some other concerns that fall out of that. When we talk about collapsing professional groups under one regulatory structure, then in fact I'm wondering if we're not altering the definition of work that impacts the labour code. If we do that, then we have some other tests that we have to set out. In fact, in my view that's a de-skilling process that should not exist in this province. I think that if we start down this road, we're going to be in trouble.

This piece of legislation is designed for winners and losers. This is not a win/win piece of legislation. Those health disciplines that had professional status in the past have a lot to gain. Those that were self-governing have a lot more to lose.

I would like to go back to this notion of the definition of work. We have a union bargaining unit, and they bargain on the definition of work. If they are to maintain that notion that work has a specific definition, then what has to happen is that if we blur that terminology, then we're blurring what defines work and what work goes on by skilled professionals in a given environment. I'm a little concerned that once we cross that line, there's no going back, because quite frankly, I don't want to go to the hospital and have the orderly give me an injection or start an IV in my hand when in fact he's not trained to do that. So I'm a little concerned that we're going to cross a line here that we're going to have difficulty coming back from.

It's interesting to note, though, that the evolution of this report has gone from workforce rebalancing to the Health Professions Act, which has 30 health care professions under it. My concern is that the recommendation was to look at collapsing several related professions under one structure if certain criteria couldn't be met. That was the original recommendation, and I'm just wondering what has fallen away to show that we need 30 health professions under one act and if that's not, in my view, deprofessionalizing. Is that the trend? Is it a matter of deprofessionalizing, de-skilling, and then we go into the union-busting because unions can't define what work is because that line is so blurred? What is the reason for doing this?

I know that I would be concerned. If this was the profession that I was previously involved in, I would have a real concern, a huge concern if we were to put cops and security guards in the same union or under the same professional act, because I can tell you from experience that that is not what I want to happen. Security guards have a certain responsibility and a certain level of training that doesn't come anywhere near what a police officer has, and I can tell you that that mix is dangerous. That mix is very dangerous. I'm not sure that having all of these professions fall under the same act – I'm a little concerned.

[The Speaker in the chair]

You know, the psychologists fall under this act, and I'm wondering, now, what defines a psychologist. Are we going to allow somebody with a two-year degree out of a college to become a licensed psychologist?

MR. DUNFORD: You don't go to college for that. Get serious. Ghosts and goblins.

MS OLSEN: Well, you know, you start down this road, hon. member, and it doesn't stop. Now, I don't want to be interrupted by the minister of advanced education. I mean, he could listen.

So I'm wondering where you draw the line. Where is the line in the sand? We're talking about professionals who have worked many, many years towards getting their professional designation. It seems to me that we're drawing a fine line in the sand and that at any time we want, we can just cross over and come back. I'm not convinced that this is the road that we go down.

The other aspect I'm a little concerned with is that this is going to be a process that is heavy with administration and that the high costs are going to be borne by the members of the professions. So it's going to be their dues that are increased to deal with the top-heavy administration in this particular act. For a government that wants to reduce government and government involvement, they certainly download the whole bureaucratic notion onto other organizations. It's just downloading. It may not be money in this particular sense, but it certainly is a downloading of responsibilities, and I think that's a concern.

I just want to identify some of the concerns that are still outstanding from some of the professions. Let's talk about the psychologists. The psychologists are concerned about the restricted practice of psychotherapy and how it is handled. They're concerned about there being a level playing field, access to different forms of organizing practices, provisions for some professions and not others. So I think there are some concerns out of there that need to be addressed.

The Physio Therapy Association has worked closely with the government and feels that the government has done a good job, but they still have some outstanding concerns that they think need to be put on the table. The physiotherapists feel that the new legislation doesn't protect the profession when it becomes a public protection issue. The purpose of the college should be to protect the profession

and thereby ensure the protection of people who utilize the services of the profession. They feel that that's not being addressed.

They have always registered first-year physiotherapy students at a cost of $40 for four years, the length of a degree. Students are provided with information on public protection, current issues, changes in legislation, and in fact the national exam. This new legislation doesn't require students to be registered with the professional organization, which may do a disservice to the students and the organization. It's no longer mandatory to register students except in the case of restricted service. This may lead to a requirement for graduates to take exams to ensure they understand the legislation before they become licensed practitioners of physical therapy. Well, why are we now taking students out of the game here? I think that they need to be as aware as the actual practising physiotherapist about what's going on in the legislation that's regulating their particular industry or profession.

I guess with that, Mr. Speaker, I hear the bell, but I know that others that will take up the challenge. Thank you.

10:00

THE SPEAKER: The hon. Member for Spruce Grove-Sturgeon-St. Albert.

MRS. SOETAERT: Thank you very much, Mr. Speaker. [interjections] I'm glad there's such enthusiasm from the other side when I stand up.

I'm really pleased to take this opportunity to speak to Bill 22. I know that the Member for Medicine Hat has taken a long time doing this and has consulted with many, many groups, and I think it's been a major undertaking that he has done. Much of the bill, I think, is very acceptable.

I do want to speak on mainly two issues tonight. Many of the professions within this accept what is happening, but two have come to my attention. Just before I got here tonight, I met with a psychologist from my riding.

AN HON. MEMBER: Are you in therapy?

MRS. SOETAERT: Well, anybody in this building would probably need therapy, and I admire people who admit when they need it too. I admire psychologists around this province. I do. In fact my sister just wrote her charter exams. We don't know if she passed or failed. In our clan we're certainly hoping she passed, but that's an aside. I'll let you all know the results.

Truly, this psychologist met with me to discuss his concerns and some of his colleagues' concerns about this Health Professions Act. He actually did compliment the Member for Medicine Hat on the consultative process and that it's taken a long time. Their primary concern – maybe you've heard about it, and maybe you're meeting with them; I'm hoping there will be some amendment coming forward – is with the governance of their profession. In a way he feels this will have an effect on other colleges and councils as well.

The main point is: who will watch the watchdogs? It's their contention that proper checks and balances with each major stakeholder, with government – we'd be a check and balance for them – the public, and the members of a profession, as individuals and as a group, have to be demonstrated, have to be protected by rights, and they have to have the powers to ensure that those entrusted with the power do a fair job, that they are regulated and competent. So within that framework of a self-governing profession, it would be both the individual's and the collective's responsibility to make sure that decisions made within a regulating body are in the best interests of the public and in the best interests of the practice.

Now, under this act the membership of this profession would lose the power that they presently have to ensure that their council properly and fairly fulfills its mandate of protecting the public and guiding the profession. To give examples, under Bill 22, the way they read it, the way it is now, it gives the governing body of a college, the council, the ability to appoint its president and council members. The difficulty is that if an elected council is given sole control, sole power to enact that, to amend the bylaws, then an elected council could effectively say: we're going to change the election process, and we're just going to appoint them. That's like a school board saying: now that we're elected, let's change the rules and just appoint each other.

I know that sounds ludicrous, but that's what could happen. As they understand the legislation and as I read it, that's what could happen. You know, you could remain in power forever. You could retain control. You could keep a small group of friends and associates, despite the wishes of a larger membership, if you're actually allowed to just appoint it. So that check they would like somewhere in the amendments, and I thought that was a pretty solid suggestion.

The other part. The act also allows the council to impose any type or amount of fees they wish without approval from the membership. Now, the potential for abuse of this is rather apparent. People in the public would say: well, that's like MLAs. So take that one or not. You know, we do have to be elected, and we are responsible for the remuneration that we give ourselves. A council who appoints themselves and then sets their own remuneration: there's no check and balance for that.

It's amazing when I make a good point; isn't it, Mr. Minister? Anyway, I actually was at this meeting and really paying attention.

MS BLAKEMAN: You always pay attention.

MRS. SOETAERT: I always pay attention.

I thought these were good points. I thought they were worth bringing up, especially as this is rather timely, in second reading, so that maybe an amendment could come forward in committee.

The other concern they had under the act was that one of the definitions of unprofessional conduct is any "conduct that harms the integrity of the . . . profession." Now, that is vague. If a council is bent on staying in power, think of the abuse that could happen. It could easily or effectively quash any dissent, especially since conviction under this section carries the likelihood of hefty fines and the frightening possibility of the loss of the right to practise. They don't feel that in its understandable desire to protect the public, the government intended to allow a small group to acquire and maintain perpetual power along with the right to effectively tax without representation. If they appoint themselves and give themselves more money, that effectively is how the membership would see that.

So if the government intends a council to act as representative stewards for the members of a profession, who as individuals and as a collective ultimately bear the responsibility for fulfilling the mandate to protect the public, then government must make its legislation clearer. Not doing so will mean that many professions will run the risk of a pretty scary dynasty. In order to prevent some of these abuses of power, it would be reassuring to me if maybe the sponsor or the minister could assure individual members of the professions that currently elect their council members that, under the new act, they will retain the right to elect their council representatives.

Further to these questions, they are wondering if the minister will assure individual members of the professions that this right will be enshrined in the statute, safe from the whims and ambitions of any

group bent on depriving membership of their traditional right to govern themselves and to determine how their profession should protect the public and guide their profession.

10:10

I will check out certain sections of this act for some of the answers, that I'm sure the hon. member has. The problem, too, may be in communication with that group. Maybe if they get this kind of information, they may have some level of comfort.

Another concern they had is that under the old act, although a council had the power to make regulations which had direct bearing on the practice of the health care profession and the public, these regulations had to be ratified by both the membership and the Lieutenant Governor. However, under this new act, this could give the council the authority to make regulations without requiring ratification from the membership. Now, to me it would appear that you could incorrectly assume that the makeup of the council is representative of the entire membership and is sufficient unto itself to make those kinds of decisions that impact the practice of all members of the profession and ultimately the public.

A further concern under the new act, as far as membership is concerned, is that a council is granted unchecked powers both for internal governance and for making regulations. I don't think this Legislature needs to hear my regular spiel on regulations.

MR. DICKSON: Why not?

MRS. SOETAERT: Well, it'd be a good one. I may save it for later tonight, but there are a few more issues I want to bring up first.

To ensure the protection of the public, individual members of the profession need to be guaranteed by statute to have a voice in the making and approving of both bylaws and regulations. I think that's very fair. I think that for any of us who have been a member of an association or a union or an organization or on any local council or school board, you have a right to voice your concerns and have a vote. Whether you lost or won the issue, you had that right to a voice and input. That's their concern right now, that they won't.

They're asking maybe the sponsor of the bill or the minister to respond also to ensure that individual members retain the right to bring motions proposing or amending bylaws and regulations forward to the membership for vote either through petition or previous notice in order to ensure that a council remains responsive to its members. It seems to have been the case where motions were not able to be brought forward from the membership, just from the council. We've all been at conventions of all types, and with motions from the floor, I can see sometimes an issue with that and a problem with that because a meeting may go awry or may go forever. But a legitimate concern or a motion that can be brought forth 21 days before the meeting should be a legitimate thing to do. It should be within your ability to do when you belong to a membership.

Also, under section 1 they're hoping to ensure that "conduct that harms the integrity of the regulated profession" is either deleted or more precisely defined so as to prevent a council using this section to unduly intimidate and police its members.

Under sections 8 and 9 of the profession-specific schedule, it reads as follows:

> Any complaint made on or after the coming into force of this Schedule that relates to conduct occurring all or partly before the coming into force of this Schedule must be dealt with under this Act.

The concern here is that the rule will be applied retroactively. Now, if this section is accepted, it appears that complaints will now be able to be laid regarding behaviours which occurred when the old act was in force and which would not have been considered as a misconduct at that time. To quote: punishing people for acts committed in the past based on wisdom obtained by hindsight is taking political correctness too far. While ignorance of our present law is no excuse, ignorance of future law is or ought to be a justifiable defence.

They're wondering, once again, if the minister or the sponsor will take steps to ensure that members of a profession who either have acted in good faith or have naively committed an action under the old acts which would not have been seen as an act of misconduct but which under the new act could now be seen as an offence will not be charged or prosecuted. I'm wondering if the minister or the sponsor of the bill has thought about that.

Finally, they believe this bill incorporates many positives and is a means of ensuring that the public is well served and well protected by the professions. They're hoping that their suggestions will be seen as additional ways of ensuring that the public is well served by those individual members of the professions entrusted with the day-to-day responsibility of competently and professionally serving the public.

I will gladly send a copy of this over to the member who sponsored the bill if he would like to take a closer look at it. I'd be more than happy to do that when I'm done. I think that they have a real concern and that it wouldn't take much of an amendment to address those concerns and ultimately protect the public.

The second section of this act that to me has come as a concern is part of the registered nurses' concerns. Actually, just today I was honoured to be asked to meet with and speak to the emergency nurses and the cardio nurses at the Sturgeon hospital. It was a workshop day for them that they had taken on their own time to get together to have some information sessions, some motivational talks, a little bit of food. It was a very good day for them. In the course of those discussions I heard some concerns about Bill 22, and I heard concerns about what they're going through right now. That isn't on the topic of the bill, so I won't dwell on those parts, but it certainly brought some issues to my attention, that cuts are still happening.

One of their concerns – and I am sure all MLAs have seen this. This was from an information letter sent from the president of the AARN, Lorraine Way. I think she lives in the minister's riding, so I know they have good communications. This is rather a strong statement from her. I know that they are in close communication. Their main concern is that there are some changes that need to be made to this. The issue is the role of unregulated health care workers, and I'm probably not telling you anything you haven't heard, sponsor of the bill, but I think it's worthy of note.

They are asked to be carrying out a restricted activity, so unregulated workers could virtually be anyone. It could be anyone. Let's hope it's not you or me walking off the street, unless of course it's the Member for Edmonton-Riverview or some other health care professionals in here. It may be a ward aid, a ward clerk, a patient care attendant, or a nursing attendant. Some restricted activities include injections, vaccinations, giving blood products, or suctioning.

Now, it's interesting. One of the actual stats and facts about nurses is that they are considered the most honest profession, above the Premier, above the Health minister – maybe I'd better go somewhere else – even above the opposition. Seriously, they are considered to be the most honest profession, and I think it's because when we walk into an emergency ward or when our children are sick or when we're in a crisis situation at a hockey game, who do we call? We call those people we trust, and usually it's a nurse or a doctor in the crowd. They willingly give. They willingly help.

I know that they're called on more often off hours than probably any one of us to offer a quick diagnosis on a rash or a bump or a

broken bone. They do it willingly, not because that's their profession, but because they feel it's their calling, and they truly do, in the work that they do, help people find help. No wonder they're concerned about this. It is no wonder they're concerned, because if you've spent your professional life and no doubt a good part of your private life working towards health, this bill is not going to address it.

Oh, I'd love unanimous consent to continue. Do you think I could have it, Mr. Speaker? I could give my nurse speech.

Thank you.

10:20

THE SPEAKER: The hon. Member for Edmonton-Mill Woods.

DR. MASSEY: Thank you, Mr. Speaker. I appreciate the opportunity to make some comments about the bill before us this evening at second reading. Some of the principles that the bill includes and the principles that structure the bill are those that were outlined by the Health Workforce Rebalancing Committee going back to 1994, when they first started outlining some of the principles, and then further in 1995, the principles that we find here were outlined. I'd like to just review those principles and then spend a few minutes with the reactions of some of the health professions to those principles or at least how those principles have been interpreted in Bill 22, the Health Professions Act.

The first principle that they outlined was that "the public must be protected from incompetent or unethical health professionals," and that seems to be a fairly fundamental concern for an act such as the one that we have before us. The professions have reacted in a variety of ways to how the bill takes and incorporates provisions for making sure that the public does in fact receive that kind of protection.

The second principle that they outlined was that

> the health professional regulatory system should provide flexibility in the scope and roles of professional practice so the health system operates with maximum effectiveness.

So as they listed that second principle, the concern with the professions, the regulations that govern professionals would be flexible enough so that changes could be made to changing conditions and allow the system to operate at maximum effectiveness.

The third principle that they outlined was that "the health professional regulatory system should be transparent to the public." This is an important principle, Mr. Speaker. "Information about its workings and purpose should be both credible and easily available to Albertans." It's a principle that many Albertans would hold to be an extremely important principle in terms of people who are not specialists but have to draw upon the services of health professions, that those people are able to understand and know the workings of the regulatory system as it applies particularly to the delivery of services.

The fourth principle is:

> The regulatory process for health professions must be demonstrably fair in its application. The principles of natural justice must be observed throughout and decision makers should be accountable for decisions they make,

again a rather self-evident plea and a call for fairness for those individuals involved.

The fifth principle that they outlined was that "the health regulatory system must support the efficient and effective delivery of health care services," somewhat of an overlap of the second principle.

It's these principles that we find embedded in Bill 22, Mr. Speaker.

It's a difficult task, of course, the bringing together under one umbrella the wide variety of health professionals that serve the system in our province, and I suspect that any of the professions would find some reservations in any bill that tries to include them all. So I think we have to weigh the criticisms of individual professions and try to determine whether those complaints are ones that should be addressed or are complaints that can be worked out in practice.

When we consulted the professions to obtain their reaction to the bill, we did receive reservations from almost every group contacted. The AARN was concerned with some of the complications that they thought the bill created, concerns regarding the delegation of restricted activities, concerns around practice permits and the college being responsible rather than the professional organization, and concerns that the cabinet will have to approve regulations. The concern with regulations and the forming of regulations is one that I think goes through all of the submissions of the professions.

[The Deputy Speaker in the chair]

The physiotherapists were concerned that the legislation does not require students to be registered with the professional organization. They were concerned that there was no protection for the college. They believe that this becomes a public protection issue.

We heard from the dental assistants, who were again concerned about the registration provisions for students.

And we heard from the psychologists. I guess of all the concerns we heard, the concerns from the psychologists were the strongest. They were concerned first of all in terms of the consultation process, that some of their concerns had not been addressed. They were worried about some professions having provisions for access to different forms of organizing practices, practice in associations, et cetera, while others did not. One of the principles that they felt had been violated is that the legislation is not written in plain language, that an act that should be accessible to people who are not specialists fails in the writing. They were concerned about the grievance procedures and how complicated they were. They felt that some of the self-regulatory functions of the profession had been eroded, and they were opposed to the new category of associate psychologist.

The speech/language and hearing association were concerned about the cost of implementation, and again they were concerned on the consultation about restricted activities.

There were others, Mr. Speaker, but one last group we heard from were the occupational therapists, and again they, too, were concerned with the complexity of the appeal decision section and the lack of dialogue on restricted activities.

So the principles of the bill's provisions in terms of supporting the principles have been challenged by some of the professions involved, but I think we think on balance that the bill does what it set out to do and puts into practice the principles that had been established three or four years ago in preparation for the act.

So with those comments I will conclude, Mr. Speaker.

10:30

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

MR. DICKSON: Thank you very much, Mr. Speaker.

MR. AMERY: Ah, Gary.

MR. DICKSON: Mr. Speaker, it's always a treat to stand with such an enthusiastic response. I hadn't, I don't think, uttered anything other than acknowledging you, Mr. Speaker, but you know, that's okay. My friend from Calgary-East may anticipate some of what I'm going to say, because I'm going to be the heretic here.

I just want to approach this on a sort of first principle basis. After

all, it was Brian Mulroney who said, I think in 1985, that, quote, only donkeys don't change their minds, closed quote. There are no donkeys in this Assembly, and there are certainly no donkeys in the Executive Council of the government of the province of Alberta. So I start this with an assumption that members come to this issue and this bill with open minds and a willingness and an interest in terms of how to make sure this particular piece of legislation works for all the members in those 30 different health care professions that are going to be affected by this bill.

When I said that I wanted to suggest what may be a heretical view, it's this, and I preface my comments. You know, I look at our friend the MLA for Medicine Hat sitting across and think: is there a member who has invested more of his waking hours in a project in the six years we've been in this House than the Member for Medicine Hat? He's laboured mightily, and whatever I may say about his bill, I don't want him to think that in any way that diminishes the kind of respect I have for his energy, his commitment, and his tenacity in what must have been an amazing task, taking all those health care professions and working with them from the initial working paper, that initial process with the Health Workforce Rebalancing Committee. I know that the Provincial Treasurer had a hand in it in the early days. A huge, huge effort.

So he's here with his child, if you will, his statutory child on the table, and I have some comments to make about that, but as I say, I don't want that in any way to be a suggestion that the Member for Medicine Hat didn't do his work. I know that he doesn't spend all his time on the 10th tee box at the Paradise Valley par 3 golf course in Medicine Hat. He spends a lot of hard time going around talking with health care professionals, and I respect that very much.

To the point of heresy. I think government has shown this fascinating compulsion, a compulsion to homogenization, to take disparate health care professions and shoehorn them into this one model. I just want to take a moment and query why we accept that as a fundamental principle. Why is it? I look and I think: you know, we have huge problems with the way we deal with health information and the way patient privacy is protected and the way information moves from one health discipline to another. I would think that would be a bigger priority. We have huge concerns with health care professionals being undervalued and in the comments of Mr. Jim Dinning recently in taking over the CRHA, his comment yet again an express acknowledgment that physicians were shut out of health care planning in the Calgary region, and that was true in other regions.

Would that not be of the highest priority if you were going to reform the health care system? If you were coming in with a clean board or a clean slate, wouldn't you be wanting to address those health information issues, and wouldn't you want to address the quality of care being provided? Wouldn't you want to address responsiveness to public issues and needs? Wouldn't those be the two or three things at the top of your agenda, Mr. Speaker?

This government chose no. They had a different priority. Their priority was not to value health care professionals, not to focus on protecting patient privacy amidst the new challenges we see, and not to look at how we can better serve Albertans. No; it was about imposing a new form of governance. It made me mindful, Mr. Speaker, that we have a government that has this amazing kind of preoccupation with governance. You know, to my constituents and maybe to some other members' constituents, people would have put the priority in a different place.

In 1885 there were only two physicians in Calgary. They both practised where Stephen Avenue Mall now is. It was Stephen Avenue then. There would have been about 150 people in Calgary in 1885. It would have been really the population of Calgary-Buffalo in the same sort of geographic area. I like to use my imagination a little bit, Mr. Speaker, and I like to think what it would be like if we took Dr. Henderson – you know, he advertised in 1885 in a business gazette in Calgary: Dr. Henderson, Physician and Surgeon; Graduate of McGill College, Montreal; Office: Stephen Avenue West, Calgary, Alberta. I think about what that physician's view would be of his role as a health care professional and sort of the context in which he'd operate if he were to be put in a time machine and plunked down now on Stephen Avenue in Calgary and had a chance to encounter our friend from the constituency of Medicine Hat and discuss this bill.

I suspect the first question Dr. Henderson would ask our friend from Medicine Hat in this imaginary exchange would be: why is it that you're focused on governance? I'm not sure how the Member for Medicine Hat would respond to that. He would talk about how hard he'd worked. He'd talk about the fact that Ontario had done it, that it was seen as providing some sort of efficiency. But I suspect what Dr. Henderson in 1995 would have said to the member opposite would be, "But what's the impact on patient care?" You know, we talk about outcomes. "What are the outcomes going to be in terms of patients in downtown Calgary? Are they going to be enhanced one bit by this change?"

I challenge the Member for Medicine Hat – Mr. Speaker, I feel badly even asking the question because he must be so sated with discussion around this issue; he's lived it for such a very long time. But if he'd permit me, I'd ask him: is there any evidence that this is going to enhance the quality of patient care?

You know, other than fiddling with governance – and we see this government all too often sort of in a bit of a wrestling match with professional organizations and so on, but it doesn't seem to be focused on impact, whether it's in the classroom or at the bedside, and that's one of the difficulties I have in terms of dealing with it.

I look at a series of statutes and really have to wonder whether the advantages which accrue to some of the smaller health professions that before may have been sort of orphaned, whether providing this new framework for them warrants the sort of impact on those established professions, which I think have done a pretty darn good job, Mr. Speaker, in terms of trying to regulate themselves to respond to medical advances, medical challenges, to an increasingly more sophisticated patient group. I wonder about that.

10:40

I had the opportunity for a time to have been the spokesman for our caucus on health issues and had plenty of opportunity to talk to physicians and nurses in virtually every major centre in the province and certainly met with representatives of most, if not all, of the other 28 professional health groups. Some of the smaller professions were very happy to have the bill. Let's acknowledge that. But there were so many questions and a lot of frustration that government was so focused on shoehorning all the professions into this homogenized model. There seemed to be precious little attention paid to what benefits were going to accrue from the change.

A couple of different perspectives on this. My wife is a chartered psychologist, so not as a legislator but just as a spouse it's been interesting to take a peek at the Psychologists Association regular newsletter. They've been informing their members over the last number of years on the progress of this. It was interesting, just as a sort of interested observer, reading the kind of analysis and the kinds of concerns this one health discipline was experiencing. I kept asking myself in terms of the net benefit – because everything we do here should be evaluated on some basis in terms of how it enhances the quality of care.

It just struck me that we have an enormous amount of effort

consumed by this, and it's not all just the Member for Medicine Hat, hard as he's worked. All of these other groups have invested enormous energy. You had the Department of Labour and the Department of Health so hugely invested in this thing. It's an odd priority, Mr. Speaker. I just can't let that go by without commenting on it.

As a Calgary MLA I was particularly interested in the memorandum dated April 20, 1999, that went to the MLA for Medicine Hat. It talked about the adverse impact on the Calgary fire department. I was thinking to myself: here we go again. You know, the city of Calgary without the steady hand of the Member for Calgary-Cross on city council is having to wrestle with the prospect of having to buy additional ambulances as a result of hospital closure. There are a host of issues the city is having to deal with because of provincial government decisions. I read this thing and I think: well, here we go again. Isn't this just another instance of a decision being made – we call it a policy vacuum in Edmonton or Medicine Hat – that has significant cost impact, significant administrative consequences that move on to the local body?

We sort of debate these things here, and maybe even the Conservative MLAs, Mr. Speaker, debated it in private. What's the impact on the Calgary region, for example? If you look at this, Calgary has had a wonderful fire department, an absolutely outstanding EMS program, certainly are national leaders in terms of quality. [interjection] You know, I'm reminded that that's the great thing about this province. It's always a question – you can never be asymmetrical. Yes, it's true. The hon. Member for Edmonton-Meadowlark I'm sure has an excellent system, but we all tend to sort of speak to that which we're most familiar with. That member I'm sure can speak –

I've had precious little experience with that excellent EMS service in the city of Edmonton, but I've had considerable contact with their Calgary counterparts. [interjection] Thanks, Mom.

Mr. Speaker, the concern that was raised by the fire department in the city of Calgary is multifold. I'll just quote from the fourth page of the memorandum, and this, as I said, is dated April 20, 1999.

> Given the magnitude, size, and public impact on the City of Calgary, I am astounded that a major stakeholder like the Calgary Fire Department has never been contacted either directly or indirectly.

Now, maybe this is inaccurate. Maybe the Member for Medicine Hat will stand up and advise us so in due course, and then I'd be happy to take his word as a member and stand corrected. Absent that, it's a good question, isn't it, Mr. Speaker? Why would it be that the Calgary Fire Department has 617 medical providers? They're spread across 30 different stations, four platoons, providing support to EMS personnel. I mean, we're talking about 617 providers. Only 154 are provincially registered EMTs, emergency medical technicians. So in our haste to shoehorn this group into the act and then with the regulated practice requirements, it looks, at least to the city of Calgary, as if there's going to be a huge cost impact. In fact, they worked it out over 10 years, and the costs associated with Bill 22 for city of Calgary taxpayers would be well over $1 million.

Now, some may say: what's a million dollars when you've got a budget spending $16 billion? But you know, I started adding it up. The Member for Calgary-Mountain View, chairman of the Calgary caucus: we're pleased to have him with us this evening, and I'm sure he has relayed to his caucus the concerns. The city of Calgary is going to have to spend over half a million dollars in terms of additional ambulances because of hospital closure. Now we're looking at potentially over a million dollars over the next 10 years because of another change. Is there not somewhere, Mr. Speaker – I have to know this, because it's driving me crazy not knowing whether in the internal government bill review process there is somebody who says: what's the impact on one of our major centres or both our major centres? Where's the filter that's used when these bills come forward?

What we perhaps have in this Bill 22 is sort of the ultimate kind of victory by attrition. You just grind and grind and grind and sort of wear down the opposition so that after a while each of the representatives in these 30 different groups just says: well, the government's going to do it anyway, and there's precious little we can do. So what we get are these kinds of protests that come in from the city of Calgary Fire Department.

I'm a Calgary ratepayer too. My constituents are Calgary ratepayers. If the government is going to provide some amelioration, some compensation, I'd sure like to know what that would be. It's maybe not provided for in the bill, but it's a direct consequential cost of Bill 22 if that goes into operation. I think that would be something the government would be anxious to share with us.

Mr. Speaker, I've got a number of specific concerns, but I'd conclude as Lester Pearson said in a 1956 speech: "If after my talk you are still confused, as you may well be, I dare to hope that it is at least confusion on a higher plane."

Thank you very much.

10:50

THE DEPUTY SPEAKER: The hon. Member for Medicine Hat to close debate.

MR. RENNER: Thank you, Mr. Speaker. I've listened with interest to a number of the members from the opposition, and they've asked a number of very legitimate questions. I look forward to dealing with the questions. I think a number of them really only will require clarification. There are a number of them that I think will be addressed when the amendments I made reference to in my opening comments are introduced in the House. I look forward to a lively discussion when the bill reaches the committee stage.

With that, Mr. Speaker, I call the question.

[Motion carried; Bill 22 read a second time]

Bill 23
Pharmacy and Drug Act

[Adjourned debate April 13: Mrs. Tarchuk]

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Meadowlark.

MS LEIBOVICI: Thank you, Mr. Speaker. I rise tonight to address Bill 23, the Pharmacy and Drug Act, which, it's my understanding, replaces the Pharmaceutical Profession Act sections which couldn't be incorporated into the Health Professions Act. So in fact this particular piece of legislation is a companion bill of sorts to the Health Professions Act, which was just passed in second reading. Some of the concerns that we noted in the Health Professions Act would, then, of course apply to this particular bill, even though this bill is specific and deals with the pharmacy and drug portions only.

One of the issues we've addressed in our discussions has been around the question: will in fact the Health Professions Act work? Does the Health Professions Act provide overlap and duplication, and will it be difficult to implement? The reality is that we will only know those questions as that particular piece of legislation is put forward.

The amount of time and thought that have gone into the Health Professions Act and consequently into the Pharmacy and Drug Act

cannot be disputed. I had made some earlier remarks with regard to the Insurance Act, that in fact there was not full consultation with regards to the Insurance Act. I think there has been a better process of consultation with regards to Bill 22, and my understanding is that consultation on Bill 23 is still ongoing and that in fact there are some issues that are outstanding that are attempting to be worked out with regards to Bill 23.

So I look forward to what the responses will be in Committee of the Whole, in that stage. The true test of the consultation process that has occurred over the last four or five years, when we get down to the final stroke, so to speak, when we get down to the nth hour, is whether in fact the ongoing consideration of the concerns of the various groups will be addressed and ensure that the goodwill that has been built up throughout the process will continue to be nurtured.

Mr. Speaker, one of the key elements in the success of both Bill 22 and Bill 23 will in fact be the aftermath, what occurs after the passage of these bills if they are passed in this particular session. The implementation of these bills will need goodwill, will need patience, will need an understanding of all the parties involved to make it work and to ensure that the safety of the public is kept paramount in looking at the work the health professions are doing with regards to providing service.

There is a question I have with regards to the Pharmacy and Drug Act. It indicates that if a pharmacy operates in a leased building, the rent payable cannot be based on a percentage of the revenue obtained from the sale of prescription drugs. The question is: is that the current practice of pharmacies? Are any of the facilities owned by doctors who would write prescriptions? In fact that would be a conflict of interest, and I'm sure the Member for Banff-Cochrane would recognize that. So it would be interesting to know what the current practice is at this point in time. There appears to be a grandfathering involved, so the question remains as to how many and what the policy henceforth will be.

There is a question I also have in that I know there has been an amendment brought forth through the miscellaneous statutes amendment act with regards to pharmacies and dealing with the designation of drugs and particular schedules. I'm wondering whether that in fact should not be addressed within the parameters of this particular bill and why we are looking at it through the miscellaneous statutes if we are moving through the Legislative Assembly on Bill 23, the Pharmacy and Drug Act. So I would like some explanation either within or outside the Legislative Assembly on the thought behind having the miscellaneous statutes amendment act provide for that when it could perhaps be provided under Bill 23. If not, it would be helpful to know the reasons why not in order to determine whether or not that is an amendment that can be supported by the Official Opposition.

The other issues that are dealt with in regards to the Pharmacy and Drug Act set out the process for licensing institution pharmacies, deal with the licensing of licensed pharmacies, indicate how in fact a licence can be terminated and suspended, deal with how drugs may be dispensed, and establish the schedule for those drugs. Again, we have the famous sections dealing with the Minister of Health, in this case, making regulations and providing for regulations to be made with regards to the designation of drugs not covered under the federal statutes as either schedule 1, 2, or 3 drugs. Perhaps this was outside the mandate of this particular exercise with regards to the Pharmacy and Drug Act. It might have been a useful exercise while the consultations were ongoing with the various health professions, including the pharmacists, to look at the whole issue of drugs, to look at the whole issue of alternative medicine to see whether or not those issues could have been addressed somewhere within this particular bill or within the Health Professions Act. I'm sure the public would be very interested in finding out what exactly the government is looking at doing with regards to that particular field that is certainly growing and, though not technically viewed as a drug, is used by many as a method to alleviate illness concerns that individuals have.

11:00

Perhaps this could have been, especially when you have a particular bill that deals with pharmacies and drugs, an opening to either provide for a definition or provide for some means of dealing with pharmacies that in fact do sell herbs, do sell alternatives to the drugs as we now know them and whether there is any indication by the government to either regulate or look at defining what those alternatives are to conventional drugs. I think this could have been an area that would have been useful to discuss, but unfortunately that did not occur.

At times we see that the government is stuck with a current model of looking at health, is stuck with an outdated model of determining treatment of health, and bases its legislation on that outmoded notion. In fact there may be other ways of looking at treating illness and looking at health in different lights, and in looking at legislation it would, I think, behoove the government to be more forward thinking and to look at where the public is moving on certain issues and to try and be in a sense one step ahead as opposed to being behind in some of what is occurring in other disciplines throughout the province.

So with those comments I believe that there are other members who wish to speak to this particular piece of legislation. It would be interesting to know what the position is of the government with regards to the selling of other items besides drugs in pharmacies and as well what the position is with regards to the selling of tobacco within pharmacies, whether that is an issue that would and could have been addressed within this particular act. I know that I have broadened the scope considerably of this particular bill, but when one looks at the actual title of the bill and what the intent of the bill is, then the reality is that the scope could have been broadened as opposed to looking at the narrow definitions that we see within this particular piece of legislation.

So hopefully we will move that one step forward and in fact move toward ensuring that some of what individuals are requesting throughout the province with regard to alternative methods of treatment can be looked at. Again, the primary issue is the safety of the public, whether it is through the provision of a service directly in a hands-on manner or the provision of an item that is taken internally or topically. That should be the primary concern in providing legislation that deals with health professionals, the protection of the public interest.

Thank you very much.

THE DEPUTY SPEAKER: May we revert briefly to Introduction of Guests?

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed? Carried.

The hon. Member for Edmonton-Ellerslie.

head: Introduction of Guests

MS CARLSON: Thank you, Mr. Speaker. Tonight we are joined by a PhD student in atmospheric science studying air pollution transport at the University of Alberta. He's here tonight to show his concern over Bill 15 and its potential negative consequences for the long-

term stewardship of Alberta's natural environment. He has written me quite a lengthy note, and I look forward to speaking to it in detail in debate. I would ask now that Brian Crenna, if he's still with us this evening, please rise and receive the traditional warm welcome of this Assembly.

head: Government Bills and Orders
head: Second Reading

Bill 23
Pharmacy and Drug Act
(continued)

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Riverview.

MRS. SLOAN: Thank you, Mr. Speaker. I've had the opportunity to review Bill 23, the Pharmacy and Drug Act. It's a companion bill to Bill 22, the Health Professions Act. There are a number of things about this bill that are puzzling to me, Mr. Speaker. I'd like to just identify them for the sponsor this evening.

The first arises in the definitions. I thought it was very interesting that under our definition of "institution pharmacy," we've incorporated a provision. In addition to an institution pharmacy being defined as

(i) an approved hospital . . .
(ii) a nursing home . . .
(iii) a correctional institution . . .
(iv) a facility as defined in the Mental Health Act,
(v) a diagnostic or treatment centre . . .
(vi) a facility as defined in the Social Care Facilities Review Committee Act,

the very last component of how an institution pharmacy may be defined is: "an institution or facility operated by or approved by the Minister of Health." Does anyone recall that wording? What was the bill last fall where we saw that wording: "an institution or a facility operated by or approved by the Minister of Health"? I believe it was Bill 37, the private, for-profit hospital act.

So in essence what this government tried to do in a very sneaky way is make a provision that such a facility could then be staffed by pharmacists, Mr. Speaker. I mean, we couldn't operate a hospital for profit or otherwise without a pharmacist; could we? So there you go; there is the link.

Now, the other aspect of the definitions that I thought was interesting is that we use the term in the bill "licensee," which is defined as meaning "a pharmacist who holds a licence." But let me point out that in subsequent sections of the bill under licence, part 1, section 4(1) for example, we say, "An individual may apply to the registrar on the form set by the council for a licence." So that seems almost to imply that the potential could exist that the individual applying for the licence, Mr. Speaker, might not be a pharmacist.

11:10

Now, this becomes more complicated when we look at another section in the act that relates to the proprietor. Let me just read for the record what a proprietor means. A proprietor would mean

a person who owns, manages or directs the operation of a facility in which a licensed pharmacy is located and exercises a significant degree of control over
(i) the management and policies of the licensed pharmacy.

So in essence this person could be like the controller, the manager, the owner in fact and has the ability to control

(ii) the conduct of pharmacists and the pharmacy interns, if any, who are employed by the licensed pharmacy.

Now, what's fascinating about that, Mr. Speaker, is that you have the proprietor with the power to control and manage and direct, but you have the pharmacist holding the licence underneath that person. Doesn't that seem a bit odd? [interjections] Well, it's like if I were a registered nurse . . .

Speaker's Ruling
Decorum

THE DEPUTY SPEAKER: Hon. members, we have a number of people who wish to enter into the debate, and you're welcome to do so in your turn. Right now we have only one person speaking on this, and that's the hon. Member for Edmonton-Riverview.

MR. WOLOSHYN: Oh, I though it was Lethbridge.

THE DEPUTY SPEAKER: Hon. Minister of Public Works, Supply and Services, you'll have your opportunity once the hon. Member for Edmonton-Riverview has concluded her remarks.

MRS. SLOAN: I'd welcome some clarification about the issues I'm raising, Mr. Speaker, anytime.

Debate Continued

MRS. SLOAN: Let me continue, then, on the proprietor issue. The proprietor owns and manages, has control over the pharmacists, but the licence for the pharmacy through which the province is going to control and regulate, I would assume, is held by a pharmacist under that proprietor's control.

Now, the scenario becomes a bit more complex because when it comes to reporting contraventions or misconduct, again it is the pharmacist or the licensee, as referred to in the act – the responsibility falls squarely on their shoulders to report misconduct. They may report that misconduct against a pharmacist, a licensee, which in effect would be a colleague, or a proprietor who is a pharmacist. But what if the proprietor is not a pharmacist, Mr. Speaker? What if, in fact, the proprietor, in assuming their responsibilities to the full degree the act allows, decides that it seems to be a very – I'm trying to think of a polite word, Mr. Speaker. I need a very polite word because the word in my mind is not polite, so I'm suppressing that. I'm working hard to suppress that. In essence what you've got is you've got the – that analogy is not polite either. Okay; perhaps I'll just move on, then, to another area.

It seems as though we're placing pharmacists in a completely unwinnable position. If the act is not requiring that the proprietor owning and managing the pharmacy will be a pharmacist and in the event that they are not and they decide that they want to conduct the business in a manner that is unethical or some might be verging on a contravention of the act – I may be wrong, and I will stand corrected if I am. But it doesn't appear to me that pharmacists as licensees will have the ability to report proprietors through this act, and that to me is troubling.

There are another couple of things in the definitions that are concerning. Another is under (x), "professional products department." This is, again, almost to the point of being ridiculous. We cite the term "professional products department" under the definitions, and then rather than define what that means, the bill says, "professional products department as defined in the regulations" will be abided by. Well, that means that that is subject to change at any time with no consultation, no public debate, no enacting of any processes of the Legislature, Mr. Speaker. In hand with the proviso earlier that such facilities could be operated or approved in a private, for-profit fashion, what would constitute professional products in the future I think could be very, very different from what we might perceive it to be today.

I wanted to also speak about the provisos under the heading Licence Required. The act indicates that

> (2) An institution pharmacy must be a licensed pharmacy if it
>
> (a) sells drugs to the public, or
>
> (b) charges an insurance company for drugs . . .
>
> (3) Despite subsections (1) and (2), an institution pharmacy is not required to be licensed when it sells
>
> (a) an investigational drug,
>
> (b) an emergency release drug,
>
> (c) a drug . . . [for] home parenteral therapy.

I thought how bizarre that is, because in essence you could have penicillin being delivered by home parenteral therapy. The institution pharmacy is issuing it. In that scenario they wouldn't be required to be licensed. But if they were to issue a prescription for penicillin to a patient who's been discharged, that would require them to be licensed. Why the contradiction between that? What are we using as the measure? If it's the medication, then it would seem to me that that doesn't make any sense.

The other thing that I would suggest in this section is that section (3) is indicating that a pharmacy is not required to be licensed when it sells "an investigational drug." Does "investigational" mean a drug that's under testing or trial? If that's the case, something in which the merits of the drug have not been completely proven, why would we say that a pharmacy shouldn't be required to be licensed to sell that? I don't believe that we have defined what in fact we mean by "an investigational drug."

AN HON. MEMBER: In the regulations.

MRS. SLOAN: Well, there you go. It's another definition by regulation. We really don't know.

Let me get to one of the other aspects of the bill, in the time I have remaining, that is astounding. That's section 5, the requirement of the registrar to maintain a register.

> 5(1) The registrar must maintain a register of the licensees and the pharmacies in respect of which licences are issued.
>
> (2) If a member of the public, during regular business hours, requests information . . . the college must provide the information described in section 4(5) with respect to the request.

So in essence what this government is saying is that we are now going to put professional colleges in the business of registries. That is in fact what we're saying, that the colleges will hold the licence registration information for pharmacies. Now, while this section does say, to its merit, that during regular business hours the public will have an avenue, what happens outside of regular business hours when an inquiry needs to be made? That proviso isn't addressed in the bill.

11:20

I'm wondering what consultations the government had with the profession of pharmacists and how receptive they were to assuming another responsibility under this act for the maintenance of a licensed pharmacy registry. Now, in effect, we would also be saying to the members of the pharmacy profession that their membership fees will have to be adjusted to pay for that, because there's no other way for professions to fund this. Professions are funded through the dues that are paid by their members for a licence. The majority of the health professions are that, but in the case of pharmacists they're going to be unduly disadvantaged because their membership fees will have to either be amended, increased, or incorporate funding for the maintenance of this pharmacy registry.

I was thinking as well about the headaches. This will mean that they will have to have a separate employee, a separate division to do that. A very expensive proposition. I'm wondering what allowances the government is going to make to assist them in doing that. Or is it just a case, Mr. Speaker, of this government once again off-loading a responsibility onto a delegated authority that is going to be ill equipped to do it or will have to yet again off-load that cost onto the members of their profession? Many puzzling questions arise from this act.

I don't believe that I heard the government say that they had the endorsement of the pharmacists for this bill. I'm hoping that at some point before we move to the completion of our debate on this bill, we will hear the government stand and say what the status of endorsement is on this particular bill. We've seen too many times, Mr. Speaker, where this government brought in legislation that is rooted in ideology, that in the real world doesn't function and doesn't serve the public. In this respect, we're not talking about widgets on an assembly line. We're not talking about putting paper in a file. We're talking about the sale, the distribution, the registration of professionals administering drugs and what the structures are surrounding them. So I'd like to know what the pharmacists are saying about this. If the government doesn't rise to the opportunity to put that on the record, then the opposition will assume that responsibility as responsible, elected, representatives of the citizens and professionals in this province.

There are additional sections, Mr. Speaker, that again I'm wondering how common they are with respect to the health professions or whether or not the pharmacists are again being subjected to something that is not entirely standard in terms of how we treat health professionals.

I'm moving now to section 19, under part 2, protection of the public and discipline. In this section the act talks about field officers. Now, again, I don't know if we have taken the time to define what "field officer" means. Actually, our definitions just say that "'field officer' means the registrar and a field officer appointed under section 19". So there's no definition of what the qualifications are in fact of this field officer position. Acknowledging that omission, these individuals, however ill-qualified or qualified they are, are going to be empowered with this act to go in and inspect pharmacies. They will have the ability to examine "any record and substance required to be kept by a pharmacist under this Act." They may be able to "at any reasonable time, enter a licensed pharmacy and inspect the operation and records of the licensed pharmacy." They "must, on request, produce identification provided for by the regulations." Again, we're not afforded that information to be able to debate it this evening.

> In carrying out an inspection a field officer may, at any reasonable time,
>
> (a) require any person to answer any relevant question and direct the person to answer the question under oath.

Can you imagine? It's like someone coming into my constituency office, or maybe I'm working in the emergency department and they come in and say: excuse me, Mrs. Sloan; I'm a field worker, and I have a few questions that I'd like you to answer under oath. You might have all chaos breaking loose in the pharmacy. You might have a patient waiting for a medication that they have to receive in short order, and you've got a field officer standing there saying: I have some questions, and I require you to answer them under oath.

That relates back to: what are the qualifications of the field officer? Now, I can't recall the phrase or terminology for issuing an oath. [Mrs. Sloan's speaking time expired] It's very unfortunate that I have to conclude, Mr. Speaker. I've most enjoyed the opportunity to debate this bill this evening.

MR. HANCOCK: Mr. Speaker, I would move that we adjourn debate.

THE DEPUTY SPEAKER: The hon. Government House Leader has moved that we adjourn debate on Bill 23. All those is support of this motion, please say aye.

SOME HON. MEMBERS: Aye.

THE DEPUTY SPEAKER: Those opposed, please say no.

SOME HON. MEMBERS: No.

THE DEPUTY SPEAKER: Carried.

head: Government Bills and Orders
head: Committee of the Whole

[Mr. Tannas in the chair]

THE CHAIRMAN: I'd call the Committee of the Whole to order. That means all members.

Bill 20
School Amendment Act, 1999

THE CHAIRMAN: When we last met in committee on this bill, we had amendment A4 as moved by the hon. Member for Edmonton-Mill Woods. We have that for our consideration. so we're on that topic.

The hon. Member for Edmonton-Centre.

MS BLAKEMAN: Thank you, Mr. Chairman. Oh, I'm sorry. Did I butt into the line ahead of you? Well, there are obviously some people who very much want to speak to this amendment. I will try and keep my remarks short.

I just wanted to speak generally first in saying that sometimes the government gets it right, and they should be given credit for that. Certainly they have got it right on a number of points here. If I am allowed to discuss those, I think the notification on expulsions, the parent meetings with the principal, the alternative education that's made available if they're expelled . . . [interjection] On the amendment, I'm hearing. Okay.

11:30

The amendment is referring specifically to the section on diversity. I've heard that described or I've read in *Hansard* the remarks of some members talking about a safe and caring community. In particular, I noted the Member for Highwood, eloquent in his defence of this section, saying that it would preclude teaching of intolerance or hate. I think legislation as we craft it needs to be very clear, and obviously there's been enough discussion and enough questions raised about this particular section in the bill that it's not clear what is intended. While we may be able to discuss it among ourselves and ask and answer questions back and forth enough, the truth is that once it becomes legislation and gets out there, nobody ever bothers to go back and look at the discussion in *Hansard* between members of this Assembly to try and clarify exactly what was intended. We need to do the job right the first time, and we have to be able to anticipate any misunderstanding that could arise and take steps to make sure that misunderstanding is no longer in the bill.

This is around section 3 and the proposed section 2.01:

> reflect the diverse nature and heritage of society in Alberta, promote understanding and respect for others and honour and respect the common values and beliefs.

And the second section:

> For greater certainty, education programs and instructional materials . . . must not promote or foster doctrines of racial or ethnic superiority or persecution, religious intolerance or persecution, social change through violent action or disobedience of laws.

I think this is where some of the confusion is arising. A number of others have raised examples of where one might want to discuss or raise examples of civil disobedience for the purpose of education.

I've looked at this carefully, and all the examples I can think of or find of civil disobedience have resulted in tolerance, have resulted in diversity being reflected. Where we have civil disobedience, it involves a deliberate, conscientious, open, nonviolent public act which does indeed break the law at the time but often leads to the changing of that law. Civil disobedience is done as an act of protest, and it's undertaken in the name of a higher principle. Most particularly I think there's an understanding that this is not done lightly, that this is not done frivolously. People that would undertake an action like this are, I would venture to say, among the more law-abiding of a society. They understand very well the pains and punishment for doing what they're doing, but they feel so strongly about it and the higher principle they're pursuing that they feel driven to it.

[Mr. Zwozdesky in the chair]

There's a couple of examples I can think of: the suffragettes marching in the streets. Well, they may not have specifically been breaking a law there, but it was certainly behaviour that was not looked favourably upon and was regarded with horror for many in society. What were they trying to achieve? They were trying to achieve the vote for women. We look at the coal miners and the actions they took. Well, their actions resulted in the creation of unions, which I think many would argue was a good thing certainly in protection of the workers in occupational health and safety. It was the beginning of all that. Or the actions that took place in the United Kingdom that resulted in the child labour laws.

I can even think of a theatrical reference in a Greek script called Lysistrata. This is all done with great fun and tongue in cheek but again around the same principle in that in the setting of this play, the women of the town or of the country choose to withhold, shall I say, connubial enjoyment from their partners in an attempt to have the men stop the war, stop fighting. Again, that's regarded with horror by many. This was an action that was going against the norm.

MR. DAY: Point of order, Mr. Chairman.

THE ACTING CHAIRMAN: The hon. Provincial Treasurer is rising on a point of order. The citation, please.

Point of Order
Relevance

MR. DAY: *Beauchesne*, on the issue of relevance. This is a fascinating revisionist view of history, but the purpose of committee is the clause-by-clause analysis of the amendment. Could we stick directly to that and move away from the history lesson?

THE ACTING CHAIRMAN: Thank you, hon. Treasurer.

Hon. Member for Edmonton-Centre, please.

MS BLAKEMAN: On the point of order. I maintain that this is relevant to the amendment we are discussing, amendment A4, which is specifically talking about the sections about civil disobedience and the teaching of it in schools and the discussion that has arisen in the discussion of this bill and of the specific section around the misunderstanding of whether the teaching or education around civil

disobedience should or should not be included. I would maintain that the examples I've given are exactly that. They're examples that are useful in showing actions that have been taken by people that go exactly to the section we are looking at and go exactly to the amendment we're discussing at this time.

Now, do I allow you to make a ruling, or may I continue?

THE ACTING CHAIRMAN: Thank you. Just before you do, I would agree that the chair is prepared to extend some degree of latitude. Provided we stick to what's contained in the amendment, I don't think we'll have any further difficulties. While we are prepared to listen with great enthusiasm to the discussion on the amendment, we'll just remind everyone to please stick as closely to the purpose of that amendment as possible, and we will carry on.

I would like at this time to just remind all members in the House to please keep the tone down in the conversations so we're able to pay even better attention to the hon. Member for Edmonton-Centre.

So, hon. member, if you'd like to carry on, please do so.

Debate Continued

MS BLAKEMAN: Thank you. There are a few examples that I think need to be brought into this debate. Now, the amendment that's been brought forward by the Member for Edmonton-Mill Woods is seeking to clarify section 2.01 in that it's making it clear that the educational programs and instructional materials referred to are not to promote or foster any doctrine of superiority, persecution, or discrimination. In particular, it's giving us something to hang our hats on there, which is spelling out that it includes the prohibited grounds of discrimination in the Human Rights, Citizenship and Multiculturalism Act.

That's what we needed to clarify in this section, what we're referring to and what the purpose of it is. The purpose of it is to be teaching tolerance and diversity. Where do we not want to go with this? We don't want to be teaching intolerance. We don't want to be teaching any intolerance for any of the grounds that are already listed in the Alberta Human Rights, Citizenship and Multiculturalism Act.

I appreciate the effort of the Member for Edmonton-Mill Woods in bringing forward this amendment in an attempt to clarify this section that is causing some unease in this Assembly. I think overall a good job has now been done with this bill and with the amendments that have gone previously, particularly in removing the Board of Reference. This amendment becomes the final button in the suit, the feather in the cap in our ability to move forward with this legislation.

11:40

I would be very pleased to support this amendment, and I urge others in the Assembly to support it as well. I would like to now see the passing of Bill 20. I think a lot of work has gone into making it a better bill that is more helpful to everyone, including the previous amendments. I think this sets us well on the road to it.

Thank you for the opportunity to speak to this amendment.

THE ACTING CHAIRMAN: Thank you, hon. member.

The hon. Member for Edmonton-Glenora, please.

MR. SAPERS: Thank you, Mr. Chairman. I'm rising to speak in favour of the amendment put forward by my colleague from Edmonton-Mill Woods. The amendment would replace the words "social change through violent action or disobedience of laws" with the words "prohibited grounds of discrimination in the Human Rights, Citizenship and Multiculturalism Act" in section 2.01(2). This is a critically important amendment, I think, to make the bill operative, and I'll explain why in my opinion that is the case.

The government would have curriculum available in schools that would not be able to teach social change through violent action. At first blush that may seem to be an appropriate prohibition, but Mr. Chairman, social change through violent action happens to represent a sizable portion of the history of humankind.

Now, that's not to say that it's good or bad or that I'm promoting it, but it's simply the case. If we were to take this section as the government would have it passed into law at face value, we would be passing a law that says: education programs offered and instructional materials used in school must reflect the diverse nature and heritage of society in Alberta but must not – must not – promote or teach social change through violent action.

At what point would an individual teacher or school board be left to determine whether they could teach world history, whether they could even teach for that matter current affairs? Would there be a breach of this section if there was a discussion in a social 20 class about what's going on in Kosovo, in the former Yugoslavia? Would there be grounds for a parent council to have a teacher called on the carpet by a principal for breaching this law if they were to talk about the violent change that has racked so many societies and cultures throughout our history? That isn't even the most troublesome part of the government amendment. The most troublesome part, from my position, is the following concluding phrase which says: must not promote or foster doctrines or teach disobedience of laws.

Now, we live in a society of law. We respect the rule of law. Without law, it's been said by philosophers, life would be short, nasty, and brutish. I'm not advocating that we don't respect the law. However, there have been times when the law has been wrong. Another cliche, Mr. Chairman, is that the law is sometimes an ass, and sometimes it's much worse than that. When Hitler came to power, one of the things he did in Germany was change the Constitution of the country. The persecution that followed, the precursor to World War II, was perfectly legal within the context of that nation's sovereign laws. The disobedience of law, I submit, sometimes is appropriate and honourable, as it was by the partisans, by the French freedom fighters, by the Germans who didn't subscribe to Hitler's doctrine. So to put in a blanket prohibition to prohibit teaching of civil disobedience and of disobedience of law when the law itself would condone actions that offend all of humanity I think is a mistake.

Now, there is a very, very simple remedy for the shortcomings of the wording of the section. I will go on record saying that I don't think it was the intent of the Minister of Education or of the bureaucrats in Alberta Education to craft a law that would dishonour those who have stood up to tyranny, those who have stood up to totalitarianism, those that have stood up to the abuse that I have referenced. But I think it was an oversight. The amendment that's been crafted by my colleague fixes that oversight. What it does is make it crystal clear that the wish of this Legislature and the laws of this province and the respect we have for human rights that's evidenced in the Alberta Human Rights, Citizenship and Multiculturalism Act is what should be at the heart, at the root of the curriculum that's provided to our students. So the reworded section gets rid of the ambiguity, gets rid of the argument, gets rid of the words that I found so offensive and makes it crystal clear.

I've been told that the reason the government does not want to have the bill amended to include specific reference to the Human Rights, Citizenship and Multiculturalism Act is because of the Supreme Court of Canada decision on Vriend. Because the Supreme Court has now read in sexual orientation as grounds for which someone could claim discrimination, that would now be seen as Act. Now, Mr. Chairman, I find this very ironic. If that's the argument

that's being put forward, that we couldn't accept this amendment because it references the Vriend decision, and we wouldn't want to do that because we're not sure we want to respect that, or we're not sure that fits in with our government agenda, then the irony, of course, is that the government would have us pass a section into law that prohibits talking about the disobedience of laws. I find that very ironic. The reason the government doesn't want the amendment is because it makes reference to a law. But what the government would have is a section that prohibits talking about the disobedience of laws.

This is a very, very confused government that would put this kind of argument forward. If there is a better reason – and I see the Minister of Aboriginal and Intergovernmental Affairs shaking his head and saying that I'm wrong. You know, Mr. Chairman, if I am wrong, I will immediately withdraw the remarks, but I would want to see every member of the front bench stand up and say: "No, that's not the case. We're not afraid of the reference to Vriend. That's not the issue."

The Minister of Education told my colleague just last night that this amendment was a reasonable amendment and that he was going to take it to caucus. Then we find out tonight that that's no longer the case, and I'm told by members of the government that it's because of the reference to sexual orientation. If they want to stand up one by one, the cabinet, and declare on the record that that's not the case, that'd be fine. But, you know, Mr. Chairman, if they're not willing to do that, then I would suggest to the Minister of Intergovernmental and Aboriginal Affairs that he should stop making the assertion that I'm wrong and should just swallow hard and acknowledge that some of his colleagues just simply don't want to acknowledge the reality of what the Supreme Court has done and they are still intent on building their fences no matter how counterproductive and contrary to the rule of law they may be.

11:50

So I would submit in my conclusion, Mr. Chairman, that the section 2.01(2) as offered by the government is unworkable and was an oversight. As has often been the case, an observant member of the Official Opposition has found that oversight and has provided a very credible and efficient way of correcting it, and I would hope we would just get on with amending this bill now that the government has taken out the other major offensive section, that being the deletion of the Board of Reference, and then we can get on with other business before the House.

THE ACTING CHAIRMAN: Thank you, hon. member. Just before we proceed any further, I wonder if we could have the unanimous consent of the House to revert to the Introduction of Visitors briefly? All in favour?

HON. MEMBERS: Aye.

THE ACTING CHAIRMAN: Those opposed? It appears unanimous, hon. Member for Edmonton-Ellerslie, so please proceed.

head: Introduction of Guests
(reversion)

MS CARLSON: Thank you, Mr. Chairman. I have four introductions this evening. We have Heather Bessey, Bill Sellers, Zoe Grey, who identifies herself as a concerned citizen from Mill Creek, so one of your constituents, and Elena Cecchetto, who's from the Alberta Wilderness Association. All of these folks are wearing No to Bill 15 tags, and they vow to be here every single night until this bill is parked and further consultation is heard on it. So I would ask them to please stand and receive the traditional warm welcome of this Assembly. Thank you for coming.

Bill 20
School Amendment Act, 1999
(continued)

THE ACTING CHAIRMAN: Thank you. I see no further speakers to the amendment, so I'm going to call the question with respect to the amendment known as A4 which stands before you and which has been proposed to Bill 20, the School Amendment Act, 1999, by the hon. Member for Edmonton-Mill Woods.

[Motion on amendment A4 lost]

[The clauses of Bill 20 agreed to]

[Title and preamble agreed to]

THE ACTING CHAIRMAN: Shall the bill be reported? Are you agreed?

SOME HON. MEMBERS: Agreed.

THE ACTING CHAIRMAN: Those opposed?

SOME HON. MEMBERS: No.

THE ACTING CHAIRMAN: That too is carried.

MR. HANCOCK: I move that the committee now rise and report.

[Motion carried]

[The Deputy Speaker in the chair]

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Mill Creek.

MR. ZWOZDESKY: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration certain bills. The committee reports the following with some amendments: Bill 20. I wish to table copies of all amendments considered by Committee of the Whole on this date for the official records of this Assembly.

THE DEPUTY SPEAKER: Does the Assembly concur in this report?

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed? So ordered.

[At 11:56 p.m. the Assembly adjourned to Wednesday at 1:30 p.m.]