Legislative Assembly of Alberta

Title: **Monday, May 10, 1999** 8:00 p.m.

Date: 99/05/10
[The Deputy Speaker in the chair]

THE DEPUTY SPEAKER: Please be seated.

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

[Mr. Tannas in the chair]

THE CHAIRMAN: Good evening. I'd like to call the Committee of the Whole to order. For the benefit of those in the gallery I would explain that this is the informal part of the Legislative Assembly. Hon. members are allowed to move around and do not have to sit in the seat assigned them. They must speak from the seat assigned them, but they don't have to sit there, so it's a chance for them to quietly visit and share information.

Bill 34
Partnership Amendment Act, 1999

THE CHAIRMAN: The hon. Member for Grande Prairie-Wapiti.

MR. JACQUES: Thank you, Mr. Chairman. It's my pleasure to open debate on Bill 34 at the committee stage. I will be very brief. I just quickly wanted to refer to some issues that were brought up by the members for Calgary-Buffalo, Edmonton-Norwood, and Edmonton-Riverview during second reading debate. There are some issues and some questions that they raised which I would like to comment on at the outset.

Mr. Chairman, one of the questions was with regard to registration costs, and I would point out that Bill 35 at page 80 identifies the proposed fees, at this point $150 for registration, but of course these charges will be reviewed in the course of Bill 35.

There was also a question with regard to: why only the eight professions? I believe I had spoken to that at the introduction, but the bottom line of it is that there are only eight professions in the province of Alberta that do not have the ability to incorporate under some form of particularly standard business corporation, and hence only these eight particular groups do not have the ability to form some limited liability with regard to their personal assets.

There was also a question with regard to multiprofessional partnerships in terms of LLP. Again, the limited liability partnerships will be restricted to those professions that are designated pursuant to Bill 34 and only where permitted by the governing body; in other words, there can be no multi cross-partnership in terms of business entities that are not recognized under Bill 34.

With regard to the issue of the registrar. That will be handled by the registrar as the registrar of the corporations or a deputy registrar of corporations which is appointed pursuant to the Corporations Act. There will be no additional staff. This will be handled by existing staff.

There was also a question: why no reference to Bill 22 in this particular legislation? It was an item that was identified early in the drafting stages, but the bottom line is that Bill 22 at this point in time is proposed legislation, and if we make the assumption that Bill 22 is passed, particularly as it relates to the four schedules that cover four professional groups covered under Bill 34, then at some point in time there is going to have to be a provision in terms of the Legislature, most likely under a miscellaneous statute amendment.

There was also an issue with regard to the 120-day notice period, and under that the registrar would be advising the partnership if they had not filed an annual return within the 120 days that the registration of that partnership could very well be canceled.

There were also some issues raised as it applies to the Ontario act vis-a-vis the Alberta bill, a question about the description of the liability of the negligent partner. Bill 34 really does the opposite. In other words, what it does is set out the conditions under which a partner's personal assets would not be subject to the provisions of any actions that were taken by negligent partners where that particular partner did not have knowledge or any supervision involved in that particular item.

There was also an issue with regard to extraprovincial partnerships. That is addressed in sections 79.94 and 79.96, which set out clearly the guidelines and the rules with regard to extraprovincial limited liability partnerships.

The question with regard to assets of the partnership in the event that there was a liability claim. This act only applies to the personal assets of the partner. In other words, the assets of the firm or the assets of the partnership would be available for any action, as they are today.

I think that covers the main questions or issues that were raised, Mr. Chairman, and I look forward to further discussion. Thank you.

THE CHAIRMAN: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Member for Edmonton-Calder.

MR. WHITE: Thank you, Mr. Chairman. This is a particularly good bill. It seems to be well researched, well drafted. The member presented it in a succinct fashion and in fact answered all the questions save one.

First of all, I should say for the record that this side is to support this bill, and we understand that the limited liability partnership would remove liability from a partner when another partner, employee, agent, or representative was held to be negligent of wrongful acts or omissions or malpractice and misconduct. All of that being said is the context of the bill, and in fact I understand the reason for no further inclusions of other professional groups is other professional groups that are defined in the acts of the province of Alberta as being self-governing are able to limit their partnerships under their existing bills as it is, so therefore they need not be required twice. In fact, it would be redundant and could cause some conflict and some misunderstanding at some point. So we understand that.

Now, there are exceptions to the rules of separating liability and having the liability run with the offending partner, if we can use that terminology, that was found so guilty in a court or found so liable in a court of law, and that's if another partner knew of the malpractice while it occurred and took no action. I suspect that part of the act will be tested more than once.

The provisions that are still under question, certainly not the 120-day period – we understand that – and setting out prescribed times for filing of reports. We have no difficulty with that either. Insofar as the liability of the partnership, the partnership would be liable only insofar as the assets would allow. I understand that if a successful suit was filed on the partnership individually and separately, the assets of the partnership would be depleted first and then would go to, in this case, the responsible partner and not to the other partners. If that is correct, then we have no further questions, and I understand the mover would give the nod to that. You would? It has been confirmed.

Mr. Chairman, we have no further arguments with this Partnership

Amendment Act of 1999, so Bill 34 should be passed with all haste and get on with other business, sir.

Thank you.

8:10

[The clauses of Bill 34 agreed to]

[Title and preamble agreed to]

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

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

Bill 12
Domestic Relations Amendment Act, 1999

THE CHAIRMAN: We have before us for our consideration government amendment A1 as moved by the hon. Member for Calgary-Lougheed.

Hon. Member for Edmonton-Riverview, you indicated you didn't have a copy of the amendment?

MRS. SLOAN: No, I don't appear to have, Mr. Chairman. I'm trying to find it.

THE CHAIRMAN: Perhaps your colleague has one.

MRS. SLOAN: Would this be the amendment?

THE CHAIRMAN: It begins "Domestic Relations Amendment Act."

A Section 2 is amended . . .

B Section 5 is amended.

It was moved on the last day of consideration of this bill.

MRS. SLOAN: Thank you. That's fine. I'm prepared to speak to this amendment to Bill 12, particularly the amendment proposed to section 2 in terms of amendments to section 1(2)(b)(ii) by adding "marriage-like" before "relationship of some permanence."

To begin this evening, Mr. Chairman, I've received a number of correspondence from constituents with respect to this issue, and I would like for the record to enter their thoughts and remarks in the context of the amendments proposed.

The first letter is from Irving and Joyce Hastings, and the letter, in fact, was addressed to the Premier. I'd like to just recite briefly, Mr. Chairman, specific directions that they've provided to the government with respect to the amendments of this bill.

> The hallmark of a mature society is a deep and residing respect for human rights. Human rights provide all Canadians and Albertans with an opportunity to strive for self-fulfillment.
>
> Along with these human rights come responsibilities. We would urge that your government enact legislation to achieve the following:
>
> (1) Make gay and lesbian couples responsible to their "spouses" under the same law as those governing heterosexual couples.
>
> (2) Make it legal for same sex couples to legally adopt children, including their partner's children.
>
> (3) Provide same sex pension benefits to gay and lesbian couples. Discrimination is not acceptable in a free and diverse society as we have in Alberta.
>
> (4) Provide for legal relationships and obligations for same sex couples. This recognizes the innate sexual orientation of gay and lesbian people.
>
> In conclusion, we strongly object to the use of the notwithstanding clause.

Now, if I interpret the amendment proposed properly, Mr. Chairman, "marriage-like" is to be added before "relationship of some permanence." I recall the debate that we had at second reading with respect to what was the definition and application of this section. Certainly there was significant concern expressed, I believe on both sides of the House, that the bill as it currently stood did not reflect respect for the Vriend decision and the equal application of rights to gays and lesbians.

I have received another piece of correspondence from Leo Campos, also Gail, Sara, and Hector. This was by e-mail on the 17th of March, and they shared concerns similar to the Hastings. Now, I'm not sure if the amendments will unequivocally address their call, that the Domestic Relations Act currently

> excludes same sex couples from espousal support provisions. To no longer be discriminatory legislation, this Act must be revised to include same sex couples.

So again, Mr. Chairman, whether or not it's the intent of this amendment to actually apply "marriage-like" or "relationship of some permanence" to partners, couples of same-sex orientation, I'm not aware. I don't believe that we had the opportunity to hear that discussion of intent when the amendment was introduced, but we may have the opportunity to hear it at some point later this evening.

There was as well a model proposed by Julie Lloyd, also of Equal=Alberta, that was sent to me. This model proposed "that there be the following categories of relationships," the first being

1. Married persons ("spouses"), and
2. Persons ("partners") who have either:
   a) entered into a contractual agreement to be treated as "spouses", or
   b) cohabited for three years in an intimate relationship or in a relationship of some permanence if there is a child of the relationship.

In this particular model, Mr. Chairman, the author chose to use the word "intimate" instead of "marriage-like." The writer expressed the concern that the judicial interpretation of "marriage-like" might exclude same-sex couples because of the common-law definition of marriage contained in such cases as Hyde versus Hyde.

Lloyd goes on to say

> that this way we can allow people, particularly same sex couples who do not have access to marriage, to start rights and obligations quickly. The proposal allows for the creation of a "de facto" status for persons who do not comply with formality and thus provide redress for hardship without discrimination.

Mr. Smith, in his e-mail to me, went further, to say:

> The debate around equality issues for persons of the gay and lesbian community is a painful one to endure from the point of view of members of the community and from the point of view of families and friends of that community. I would suggest that these viewpoints are not always considered when the debate is focusing on words like "normal" or "moral".
>
> The moral highground taken in the past has been to pit the "family" and the "erosion of family" against the right to fair and equitable treatment under the law. I would like to remind you that we are members of families, Alberta families and we have stood by those families with the same love and devotion as other Albertans. I would remind you also that some of us are parents and raise our families to be responsible and contributing members of Albertan and Canadian society.
>
> It is time for everyone to take a step backward, look closely at the issues and to create law that is inclusive of all Albertans regardless of race, colour, religious belief, cultural background, social and economic status, sex and sexual orientation.

I'd like to formally thank all of these citizens for their submissions to the members of the Assembly, not just to me specifically. I've enjoyed providing those on the record this evening and will look forward to the further debate of this bill.

Thank you.

8:20

THE CHAIRMAN: The hon. Member for Calgary-Buffalo.

MR. DICKSON: Thank you very much, Mr. Chairman. You know, some of us were beginning to wonder when Bill 12 was coming back. I note that we last had a chance to speak to it on April 28. At that time I think I'd made some observations relative to the amendment which suggested that if it weren't for two things, the pending M and H decision, which the Supreme Court of Canada was expected to bring down I think two weeks ago – now I guess every day brings it a little closer. Will we see it before we rise here, before we break for the summer? I don't know. Maybe that was the government's strategy. I know the Member for Calgary-Lougheed, probably a very able strategist, had been hoping that maybe we would've had some further direction from the court to bolster her hand in maybe expanding the government amendments. But we don't have that, so we're going to have to proceed as best we can, just doing what we think is right in terms of ensuring all Albertans get equal treatment.

The members may recall that when we had the current amendment, A1, introduced by the Member for Calgary-Lougheed, she talked about valuable input from the Canadian Bar Association. I think she mentioned the family law sections, north and south. They are an excellent source of information, but I think, as I pointed out last time, Mr. Chairman, it ignores completely the issue that a significant number of Albertans would be discriminated against if we simply accepted this amendment and did no more.

So I'm going to suggest a bit of a Faustian bargain to members of the House. I think we might even want to consider supporting this amendment but on the basis that we would then embrace the next amendment that is coming forward, which I can assure members will remedy the area of deficiency in A1. The amendment coming forward is one that's going to fill the gap that's left and that will ensure that this is not just restricted to those Albertans living in opposite-sex relationships, be they common-law or in a traditional marriage. Under the provincial Marriage Act it'll add the additional provision. I think it would be tough to argue . . . [interjection] I'm sorry, Mr. Chairman.

THE CHAIRMAN: I was just wondering if this is a subamendment or if it's a separate amendment.

MR. DICKSON: No. I'm speaking to the House amendment that's A1.

THE CHAIRMAN: But you're telling us that you're going to put an amendment?

MR. DICKSON: Yes. Yes.

And I'm indicating that my inclination is to support the existing amendment before us because I think it in a very modest way makes some improvement to Bill 12. But I'm going to say, Mr. Chairman, that I don't want any argument of estoppel, that if I support this amendment I will somehow have suggested that this completes the package, because it doesn't. I know we have the rapt attention, the absolutely rapt attention of the Minister of Community Development, who is saying to herself: how is it possible that my colleague from Calgary-Lougheed would have left anything out? That may be a conversation these two members have had before and will have again, because I know both of them want to do the right thing. That's why I'm counting on the support of both those members when we get to the next amendment. But on the one in front of us, I think it tries to bring us more into line with the Divorce Act, and that's a good thing.

One of the problems I might just parenthetically add while we're talking about this is that this demonstrates the idiocy of having so many different statutes dealing with family law, Mr. Chairman. That's why I prepared the Family Law Reform Act, which came in as a private member's bill a number of years ago but didn't get debated. The point of it was to give the government a bit of a cue, a clue, an urging, a suggestion – heck, we wrote the bill for them – to basically bring together these different family law statutes into a single statute. You know, we see here this modest effort to try and square the Domestic Relations Act as much as possible with the Divorce Act and import some of the same tests. A wonderful idea, but it demonstrates how awkward and confusing it is when you have all of these different statutes dealing with the area of family law.

I'm going to urge members to support the amendment we have in front of us but to recognize that it is extremely limited. Our main work tonight, I think, will be seeing not just how we ensure that we have a greater degree of congruence with procedures and processes under the Divorce Act but how we ensure that all Albertans get equal treatment.

So those are the comments I wanted to make in concluding debate on amendment A1, and I encourage members to vote for it. Thanks very much.

[Motion on amendment A1 carried]

THE CHAIRMAN: The hon. Member for Calgary-Buffalo.

MR. DICKSON: Mr. Chairman, we've made a modest improvement to a badly deficient bill. Now we get down to sort of the meat-and-potatoes part of the agenda. [interjection] That was not a disparaging comment about the other amendment. I just said that it didn't cover enough ground, Minister of Community Development, through the chair.

So what we now have is a two-page amendment, and just before moving the amendment, Mr. Chairman, we want to be real clear in terms of what we're doing. The amendment is in parts A, B, C, D, and E. To economize on the time of the Assembly, I propose that we deal with it as a block, be able to debate it as a block and vote it as a block. Now, if there were problems and people wanted to do it severally, I'd be happy to sit down and hear that argument. But I think at this point that just makes more sense in dealing with it, because all of these elements on the two pages we have in front of us really speak to a single deficiency.

So that's my proposal, Mr. Chairman. I don't hear strong disagreement, and I hear some support for dealing with those amendments in a block. I'd just proceed to go through them. I'm moving that Bill 12 be amended as follows. In A, section 2, the proposed section 1(2) is amended by adding the following after clause (b):

(c) "partner" means
  (i) a party to a common law relationship, or
  (ii) either of 2 adults who have entered into a written agreement, duly executed before 2 witnesses who then execute affidavits of execution, with the intention of creating legal obligations and duties pursuant to this Act.

In B, section 5 is amended in the proposed section 16.1 by (a), adding "partner or" before "spouse" wherever it occurs, and (b), by adding "partners or" before "spouses" wherever it occurs.

In C the following sections are amended by striking out "spousal" wherever it occurs: section 3 in the proposed section 7; section 4 in the proposed heading to part 3; section 5 in the proposed section 16.1; section 6 in the proposed section 20.

In D section 7 is amended in the proposed section 25.01 by (a), in subsection (1) adding "Partners or" before "Spouses"; (b) in subsection (2)(c) by adding "partner's or" before "spouse's" wherever it occurs; (c) by adding "partner or" before "spouse" wherever it occurs; (d) by adding "partners or" before "spouses" wherever it occurs.

Part E. Section 8 is amended (a) by striking out "common law" and substituting "partner" and (b) by renumbering it as section 8(1) and adding the following after subsection (1):

> (2) A partner may not commence the initial proceeding to enforce a right or obligation arising under this Act more than 6 years after the dissolution of the relationship.

That is amendment A2 that I'm moving this evening, Mr. Chairman, and if that's in order I propose now to describe why I think this amendment is important.

8:30

Mr. Chairman, there are at least two reasons for putting this amendment before the members. The first one would be this, that it is an attempt to ensure that all Albertans in similar circumstances have access to courts and to legal remedies. The Domestic Relations Act, part 3 and part 4, allows currently a spouse, somebody in an opposite-sex marriage, to seek a protection order or a support order, and what the government has done with Bill 12 is come along and say: we will expand that because the courts have told us we must under section 15 of the Charter of Rights and Freedoms. The courts have said that there must be provision for people living in common-law relationships. There's a lot of people I think in the Airdrie community who would be interested in these kinds of relationships, and people living in every constituency in this province will have an interest in this. I think every MLA in this Chamber will have some people who will benefit from this amendment.

What we're proposing to do now is say that we have in effect two categories of people who can apply to the court. Mr. Chairman, the first one is those opposite-sex partners in a regular marriage sanctioned under the provincial Marriage Act. Now, we have a second category here which is much broader than what the government envisaged in Bill 12. What we've done with this amendment is said that the other person that can apply is a partner and that can be a partner in either a common-law relationship of any gender, same-sex or opposite-sex – it doesn't matter – or one of two adults who's entered into a written agreement duly executed before two witnesses who then execute affidavits of execution.

You know, there were probably people in the far east part of the province who could benefit from this kind of provision. I know that the Minister of Energy regrets ripping up those amendments before we'd even gotten to hear your argument on it.

Point of Order
Factual Accuracy

DR. WEST: Point of order. Mr. Chairman, I was sitting here minding my own business. Under 23 (h), (i), and (j), impugning whether I ripped them up. He has no idea, and he makes reference and reads it into *Hansard*, and I think that's creating a disturbance in the Assembly that's uncalled for during debate.

THE CHAIRMAN: On the point of order.

MR. DICKSON: Well, Mr. Chairman, I witnessed the minister with some to-do ripping up two pieces of paper. If it was not the amendment that was just circulated, I want to apologize to the Minister of Energy right now. If it was not amendment A2 he was ripping up, then I withdraw the comment I've made, Mr. Chairman.

THE CHAIRMAN: Okay. The hon. Minister of Energy has risen on a point of order. I would concur that imputing a motive to tearing up a piece of paper – we all sit at our desks and tear up papers – I think is . . .

DR. WEST: I tear up a basketful a day.

THE CHAIRMAN: Order, hon. member. That's an exhibit, and we don't need that.

The point has been made, and you've apologized and withdrawn the remark. We can proceed on amendment A2 to Bill 12.

Debate Continued

MR. DICKSON: Mr. Chairman, I was going to talk about the story of the human paper shredder, but I'm not going to go down that road.

In any event the point of the amendment package was this. It's possible for somebody living in a same-sex relationship to have equal access to the courts, to the remedies under part 2 and part 3 under the Domestic Relations Act in one of two ways. One way would simply be to be a party to a common-law relationship, and that has been defined in another part of the act; in other words, somebody who's cohabited for a period of three years. Or it could be two people who go down to the Willson stationery store or any other stationery store, get a very simple affidavit of execution, a very simple agreement. I envisage that it would be a schedule to the act. It would be available on the Internet. You could access it on the Leg. Assembly web site. You simply sign this very simple agreement. The agreement would simply say: we're entering into a mutually supportive long-term relationship; in the event of separation, either party may have access to the court in part 2 and part 3 of the Domestic Relations Act. Pretty straightforward.

Now, the reason for that is that if you're a married person – and this is where we're trying to find some parity, some equality – under Bill 12 you don't have to wait three years. You simply go down and go through a form of marriage under the Marriage Act, and immediately after the fact of marriage you're entitled to the relief, or at least you're entitled to make the application. When I say relief here, it just means making the application. It will be for a court hearing the affidavit evidence and in some cases viva voce evidence to decide whether there would be appropriate circumstances which . . .

THE CHAIRMAN: Hon. members, I wonder if we might have an opportunity to briefly revert to Introduction of Guests?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

The hon. Member for St. Albert.

head: Introduction of Guests

MRS. O'NEILL: Thank you very much, Mr. Chairman. It gives me pleasure to introduce to you and through you to members of this Assembly 11 Pathfinders of the Girl Guides of Canada from Sherwood Park who are seated in the members' gallery with their leaders, Cathy Verdin and Mary Olekshy. I would ask them to please rise and receive the warm welcome of the Assembly.

THE CHAIRMAN: Thank you, hon. Member for Calgary-Buffalo, for allowing that introduction.

MR. DICKSON: Mr. Chairman, we're always delighted to have

Pathfinders come in and watch the Assembly, and on behalf of my colleagues I welcome the Pathfinders here this evening as well. In fact I have to tell you that I had more fun when my daughter was a Pathfinder going along as a parent helper and teaching lashing and building a bridge one time with a bunch of Pathfinders than I ever had when I was a Boy Scout myself. It's a great organization, and I hope they enjoy their time here.

Bill 12
Domestic Relations Amendment Act, 1999
(continued)

MR. DICKSON: Mr. Chairman, getting back to the amendment, what we are trying to say is this: if you happen to live in a same-sex relationship, you should have an opportunity to be able to access remedies without waiting the three years by simply living common-law and bring yourself within the common-law definition, and that's why we created this alternate forum.

Now, we'd looked very carefully at the notion of a registered domestic partnership, and I know that the Minister of Community Development and her colleagues are looking at different ways of dealing with this. We saw the report from the fences committee, and we know that there's some attraction apparently to some government MLAs to this notion of a registered domestic partnership, but we opted not to go that route in these amendments.

The reason would be this. In a province like Alberta for some people it could be extremely prejudicial in terms of their jobs, in terms of other aspects of their life to have to go down to the division of vital statistics and register their relationship so it becomes a public record. We thought we'd come up with a proposal that would spare people that kind of public notoriety.

8:40

We thought it made sense to simply say: what could be more basic than a written contract between two people? It also has this advantage. It means that this would also be available to people in other kinds of arrangements. They don't have to be sexual partners. In fact, Mr. Chairman, it could be two sisters who choose to live together. I think we all know and probably all have in our constituencies adults – it may be the adult son who lives with his mother; it could be two brothers who live together. There are often people who for a variety of reasons form a mutually supportive, long-term relationship. Who are we to judge what kinds of relationships people can enter into? Secondly, why is access to the courts limited to only certain relationships and not to others? So this proposal frankly would allow those two 50-year-old sisters who live together in a supportive relationship to enter into one of these very simple written agreements. You know, they don't have to enter into an agreement. I mean, it's simply if they choose to do so.

Mr. Chairman, the proposal respects the right of Albertans to make their own decisions. To those members who think they may be more interested in a registered domestic partnership, I'd say: do we really need more bureaucracy? Do we really need more government forms? Do we really need more people lined up at the vital statistics office? I don't think so. My caucus supports a reduced government, a government that focuses only on services that must be provided, and that's the reason we think it's important to look at this sort of change.

The other thing – and this should be of great interest to the Provincial Treasurer – is that what this does is virtually makes our legislation Charter-proof. If this amendment were accepted, the best legal advice I've been able to obtain – and this is from other than the Minister of Justice, of course – is that this would effectively ensure in this amendment that there would be a very slim to none kind of opportunity for somebody to be able to convince the court to impugn our Domestics Relations Act. So I think it's positive in that respect as well.

The other point I'd make is this. I may soon be coming to the end of my time, and I know there'll be other people that will want to expand on the reason for the amendment. [some applause] Well, that's encouraging, Mr. Chairman. Thanks very much. I'm going to take that as applause for the last point I made, and I want to thank members for showing that kind of sensitivity and that kind of appreciation for the point.

Some people may say that this amendment is premature. It may be that some members may want to say: let's wait and see what the Supreme Court of Canada does in the M and H case. The answer of the Alberta Liberal caucus is: we don't need to wait for a court to tell us what's fair. We don't need to wait for the courts to tell us that we have to ensure that all Albertans are treated in a fair and equal way. We don't have to wait for the court to tell us that every Albertan should be able to get into their courthouse, that the doors should be barred to no particular group. So that's why I think it's frankly dangerous in part for somebody to say: well, we'll wait for the court to decide. What if the court in M and H said: well, we're not going to redefine the word "spouse." Would that be good enough? I think not, Mr. Chairman, and that's the reason we put these amendments forward at this time.

I hope members appreciate that we considered redefining the word "spouse," because that was another option, or redefining "marriage." The decision of the Alberta Liberal caucus is that we should and must respect the fact that most Albertans have a particular understanding of what the word "marriage" means. I often use the example of my 70-year-old parents. I think they are prepared to recognize and allow people to enter into their own relationships. But don't try and tell them that "marriage," a term they have known for their 70 years, is now going to mean something very different. Don't try and tell them that the word "spouse" is suddenly going to mean something very different. They understand it to mean an opposite-sex couple, a husband and a wife. They understand marriage to mean something between a man and a woman. I think we can respect that and not put those people in a position where they are forced to deal with a different meaning. So we've come around that and put forward an amendment which addresses that as well. So those are the reasons, Mr. Chairman, why we'd urge members to consider it.

Now, I think if one looks at what's going on in other parts of the country, we'll see that there are changes in other jurisdictions. I think we've seen sexual orientation discrimination prohibited in virtually every province in Canada. Alberta has not seen fit to actually amend the Alberta Human Rights, Citizenship and Multiculturalism Act yet, but certainly as a result of the Delwin Vriend decision last year, now sexual orientation must be read into the act. It's unfortunate that we don't amend the act. Be that as it may, the model we're putting forward in this set of amendments is one that can be used in a host of other statutes.

You know, we tried to design one. I remember when the Premier said to us, Mr. Chairman – he looked and pointed at me and the Leader of the Opposition and others and said: tell us what your ideas are on this thing. The government was in a jam, and they needed some help. Well, I don't know how much more helpful we could be than this. We've put together a package. We've put together a model, and it's a model that would work not just with the Domestic Relations Act but with a host of other statutes. I'm going to be interested to see if the Premier is prepared to take this model that we've offered him and run with it. Now, his idea of running may be running away from it, not running with it, but the point is that this is

a model that in fact I think would serve this province very well.

There may be members who want to move some subamendments to it. That's fine; we'd be happy to speak to those and debate them. I certainly think this amendment is one that would allow us to be Charter-proof, and I think members should be keen on embracing that.

Those are the comments I wanted to make. I'm going to sit back and listen with keen interest to the debate that follows. If there are government members that have opposite views, I look forward to hearing them and to a dialogue with those members.

Thanks very much, Mr. Chairman.

THE CHAIRMAN: The hon. Member for Calgary-Egmont.

MR. HERARD: Thank you, Mr. Chairman. I think we're referring to amendment A2, are we?

THE CHAIRMAN: Yes, A2, as proposed by the hon. Member for Calgary-Buffalo.

MR. HERARD: Thank you. I've read this thing, and I've listened attentively to the debate and to the reasons put forward by that hon. member with regards to doing this. Now, I confess that I don't have the background that he does in law, but something occurred to me as I was listening to this and reading this.

It seems to me that as things exist today, if two adults, be they same-sex or not, want to enter into a written agreement and duly execute that before two witnesses and then execute affidavits of execution with the intention of creating legal obligations and duties, they can do that now. Perhaps I'm missing something, but it seems to me that if two people want to establish, you know, something in law, essentially live up to responsibilities or take responsibilities for certain obligations, they can do it now. Why do we have to change definitions to include certain lifestyles when in fact if those folks want to enter into agreements they can do it now? I don't know if the hon. member has an opportunity to answer that, but I don't understand why we're even having to do this at all.

Thank you.

8:50

MR. DICKSON: Mr. Chairman, it's an excellent question, and I appreciate the Member for Calgary-Egmont raising it. The reason I say it's an excellent question is that I've heard other members in this caucus also raise that, and it's my oversight I didn't address it.

It's true that two adults in this province who are mentally competent can enter into a contract to do virtually anything so long as it's not illegal. The difference is this: two adults can retain two lawyers and spend hundreds, maybe thousands of dollars each to do the equivalent to what we know as an antenuptial, or prenuptial, agreement that says that in the event of separation you get the television, you get the bank accounts, and so on. That is still possible.

The point is this, though: you can't give the courts jurisdiction by agreement. The Domestic Relations Act, which is a very specific statute, gives the courts remedies to give a protection order or support order under part 3 and part 4. You can only go to court and ask for those things if you come within what the act says, if you meet the threshold test. Right now that is two married people. If Bill 12 passes, it could be an opposite-sex couple.

So what I say to the Member for Calgary-Egmont, raising a very reasonable question, what happens is this: this proposal allows those two people – they don't have to see a lawyer. They just sign this very simple little thing saying that in the event of separation, either party can go to court and exercise the remedies that exist there. Then when they show up at the courthouse if they separate, if they choose to make an application, all they have is just a one- or two-page agreement, and that gets them in the door, and then they make the argument in front of a judge.

If you have two parties who have just made this big, huge agreement, what happens to enforce it – you can't go and do it under the Domestic Relations Act. What you have to do is bludgeon each other to death, the way you usually do in lawsuits. You issue a statement of claim. There are 15 days for the other party to defend. You go through examinations for discovery. Two years later, if you're lucky and you've got lawyers who move with alacrity, maybe you're there for trial.

That's not the process that people under the Domestic Relations Act use. They can pop in before a judge on relatively short notice and say: "I was in a relationship, and we've separated. There's a huge economic disadvantage. I've been taken advantage of. I want some support. Or I need a protection order. I'm asking the court for it." So it's very different. I don't know whether I'm making the distinction clear. Although two people can enter into an agreement, you cannot by the agreement create jurisdiction to be able to go to court and use remedies under a specific statute. All you can do is take a very expensive and very long and involved route. That's the best explanation I think I can offer. So it doesn't preclude two people entering into an agreement, but it doesn't give them access to the same remedies.

Thanks very much, Mr. Chairman. I think there are other speakers.

THE CHAIRMAN: The hon. Member for Edmonton-Ellerslie.

MS CARLSON: Thank you, Mr. Chairman. I rise to support my colleague's amendment to Bill 12, amendment A2 I believe it's called. I agree with my colleague from Calgary-Buffalo that this is in fact a good companion amendment to the one that we just passed. It rounds out and completes the package almost fully, as we've seen it, and enhances this bill; there's no doubt about it. If I could just add a couple of comments to the query by Calgary-Egmont in terms of why this can't just occur now under Bill 12.

If you take a look at this in terms of protection orders. If same-sex partners have to go through the huge process of getting a lawyer and writing up documents and so on and so forth, the expense of that, the time associated with that, the wherewithal it takes to get into a lawyer's office and get through that process, and then something happens in the relationship, if for some reason one of the partners decides they need a protection order, which sometimes happens, Mr. Chairman, usually people in the position of requiring a protection order don't have a lot of access to resources. They don't have the same wherewithal that they would have had in the same instance when they went to a lawyer for an agreement in the first instance. For some reason they are now at a significant disadvantage.

We see this all the time with traditional married couples. When one of the parties needs a protection order, they are usually destitute to some degree. They usually don't have access to resources as they would have had in the past. They need a fast process to get a protection order, and they don't have the resources to access it through the systems they would need to have.

If this amendment here tonight isn't passed, it would be much longer, much more difficult for them to access, and would in essence set up a number of barriers that would preclude many people from accessing what may be a very needed step in terms of a protection order. So in fact same-sex couples won't get equal treatment without this kind of wording in the amendment.

I hope that helps clarify Calgary-Egmont's question. I'm sure if that doesn't, there are a number of my other colleagues who will be able to help in that regard.

Mr. Chairman, this amendment is important to have in this bill, I believe. To put "partner" into this amendment before "spouse," wherever it occurs, pushes this government into the 21st century, although I'm sure it pushes them in kicking and screaming, as we have seen over the past few years in this Legislature. [interjection] Yes, and putting their nighties over their heads and cowering, as my colleague from Edmonton-Riverview made a point of on a previous occasion.

All of those visual images I think are very real in this context. They don't want to go there, but the fact is that one way or the other, Mr. Chairman, they're going to have to. They can do it now the right way, the proper way, the forward-thinking way and enshrine it in legislation through this amendment, or they can wait for the court challenges.

We've seen what happens in those circumstances. They're costly. They create a lot of discomfort in the community. They create winners and losers. They put up barriers for people. I don't think that is really how we want to treat people in this province, although you would never know it from the way the government acts most of the time. Having said that, I think this is a position they can take, not where they're forced to by the courts, as they were in terms of bringing in Bill 12 in the first place, but in a forward-thinking manner, where they can enshrine in legislation something that then makes the legislation, as my colleague from Calgary-Buffalo said, Charter-proof – wouldn't that be a nice change for this province? – not, every time we get into one of these tight corners, having to go to court and spend taxpayers' money defending what needs to be done and what should have been enshrined in legislation.

The government's refusal to acknowledge that putting "partner" in here before "spouse" is something that's important, that recognizes the social set of conditions we live in in this world and in this generation, I think speaks to the ethnocentricity of North American legislators, Mr. Chairman. I think that's something that we need to seriously take a look at.

9:00

In translating that for this front bench, what it really means is we're seeing a government in this province that works from the dinosaur age. They only see their own culture. They only see their own narrow social framework within which to operate, and it is archaic. It's ice age in mind-set, and that's the kind of legislation we see being put forward here. It's very ethnocentric in its purpose.

If we were to take a look at other cultures existing now, many of whom come and settle in Alberta, Mr. Chairman, we would see that their set of social parameters really doesn't fit. If you were to take a look at the Hindu culture, there is no marriage licence, so while they come to this country and say that they're married, in fact by the particular defined, narrow, prescribed circumstances that this government recognizes, they aren't. They're simply two cohabiting people. For the first three years that they would be in this province, they wouldn't be recognized either.

Why can't this government think outside of the box just a little, Mr. Chairman, and take a look at the complete society that we live in today and recognize all of the variations that are thriving in this province and making this province a wonderful place to live and work in and to raise our children in? This amendment that we see here is one small step forward in that regard. Why can't we just do the right thing this time and acknowledge that it needs to be put in legislation before it gets hauled before the courts and costs people a lot of money and creates a lot of problems and barriers for people in this community? Let's take a look at some of the other cultures that are settling in Alberta and take a look at the rules that are prescribed for them to live within their social and cultural barriers and framework and see if we can't acknowledge them.

This is more than just being about same-sex partners, Mr. Chairman. This is about acknowledging partners in a relationship, who work together, who build a life together, who raise a family together, who contribute to the tax framework, that this province cherishes above and beyond any other kinds of criteria that people could contribute to. Let's acknowledge that in its totality rather than finding such a very narrow focus that when we talk about this bill, we just talk about spousal, because it doesn't reflect the society. It doesn't reflect male and female relationships that we see occurring in our province at this time. I think those are some very, very good reasons for this government to take a strong look at this amendment, before they just arbitrarily vote it down, which is usually their way when we bring forward amendments, and to think about it for a moment, think about how this can help complement this bill – the amendment we saw just before this passed with support on both sides of the House – and see if they can't move their thinking outside of the box for a little while and recognize all the different nuances we have that make up a part of the fabric of this province.

So with those comments I will take my seat.

THE CHAIRMAN: The hon. Member for Edmonton-Riverview on amendment A2.

MRS. SLOAN: Thank you, Mr. Chairman. I'm extremely pleased to rise in support of my colleague the Member for Calgary-Buffalo's amendment to Bill 12 and to lend support to the reasons for which he's made this amendment. I believe it's Calgary-Lougheed that provided the last amendment which we debated, and I think it was provided with the same intent, an intent to try and broaden the definition so that it would apply in perhaps circumstances with respect to same-sex marriages. But as I pointed out in the citation of correspondence earlier in my debate, it may very well not be broad enough to prevent this government from being taken to court over the definition. I think that's why the hon. Member for Calgary-Buffalo has proposed the amendments before us now.

You know, when I look back on this session, I think this bill will be, in my mind, one of the most challenging bills that we've debated in this Assembly when you look at – and certainly it has been reported – how divided Albertans are on this issue. In fact, a strategy paper that was reported in March of this year specifically talked about the degree of polarization that exists within our province surrounding this particular issue. The report cited that public views were equally divided and that it would be difficult for government to get a clear reading on what action it should take.

The interesting part of that, Mr. Chairman, is that when a government can't establish a clear mandate from its electorate, that's when you really see what a government is made of, how far they're willing to go to be just and fair and equitable, how much wherewithal they have to take a stand that is true and right. I will acknowledge here tonight that we don't have, that there is not solidified support or majority support on this issue, but I think it's an area where the government has an opportunity to show what they're made of and to make this bill such that it will not be subject to challenge by any court.

MR. DICKSON: That would be refreshing.

MRS. SLOAN: That would be so refreshing.

I think we've spent enough taxpayers' money in this province

challenging issues before the courts, all the way to the Supreme Court, where I'm not really sure the legislators or the government that were involved in those challenges really had a clear mandate to do so. Just referring back to the ministerial task force report, clearly in their opposition to the Vriend decision this government did not have majority support to oppose that all the way to the Supreme Court. In fact, if I can read the exact citation, it summarized that 69 percent of poll respondents said that using the controversial clause as an override of the Charter of Rights and Freedoms should only be invoked if there is a clear vote of support in a referendum.

The report said that a majority of Albertans do not support using the Constitution's notwithstanding clause to block expansion of gay rights and benefits. So in fact if the question had been asked, Mr. Chairman, I would hazard to guess that the majority of Albertans would not have supported spending the thousands, perhaps hundreds of thousands of dollars we spent challenging this issue to the Supreme Court.

Just to summarize on that point. When I look at this issue and in my debate of the bill, the lens through which I've looked is: is this law fair, equitable, and just? Regardless of what sex or sexual orientation or gender the citizen is that happens to find themselves in a position where they need to apply or take an action under this act, is it going to apply equally to them like all other citizens in the province? I don't believe without this amendment that we can say with certainty that it will. So for me it's a very clear lens through which we have to look, and I think the government has an opportunity this evening to actually save themselves some grief and save the taxpayers of this province some money by supporting the amendment proposed by the Member for Calgary-Buffalo.

9:10

Just some final thoughts, as well, with respect to this issue, and again correspondence that has been sent to me as well as to other members of the Assembly by Inez Walker, the chair of the sexual orientation, pastoral care, and justice task group. Inez writes that in 1985

> the United Church of Canada prepared the following statement for The Equality Rights Commission: "To leave one group of citizens outside of the rights and privileges (as well as responsibility) is a dangerous precedent. In a democracy, it is equally dangerous to leave the decision about inclusion or exclusion of any particular group from human rights safeguards to the will of the public at any moment in history."
>
> Fourteen years later we are saying the same thing, however we now have knowledgeable MLAs who are agreeing with us, and then there are those in the Government who say: "that if a decision is required on these issues that the government will ask the people for advice and act accordingly".

The writer asked, "Do you not think there is a little waffling going on here?" I would have to respond in the affirmative, Mr. Chairman.

Inez also spoke about a component which we haven't mentioned this evening, and that is the healthy development of children being raised in relationships and her desire to ensure that those children receive stable, consistent, warm, and responsive relationships.

> A parent's capacity to support and be emotionally available to a child is enhanced in the context of a supportive relationship, especially if there is good communication, effective problem solving and sharing of family responsibilities.

In that respect, Mr. Chairman, again the amendments proposed are providing for legislative equality and an environment in which, if these sections were applied in other legislation, as the hon. Member for Calgary-Buffalo provided for in his introductory remarks, we could ensure that those children who are affected by such acts are receiving the entitlements that they're deserving of.

With those thoughts I will conclude my debate this evening. Thank you.

MR. DICKSON: Mr. Chairman, human rights are never about opinion polls, as the Minister of Justice has again discovered to his regret with Bill 38, which seems now to have, once again, been consigned to the garbage can or the paper shredder. Yet I think some members may be interested to know there are questions about where Albertans are at on this issue of acknowledging those Albertans who choose to live in same-sex relationships. As I say, although I don't for a moment think that this is about opinion polls, it may be of interest to members to know that Albertans have views on this matter.

I think what happens so often, Mr. Chairman, is we come into this Assembly and we all, every one of us, tend to speak and vote our own prejudices. In the things we say in this Assembly and in the way we vote, we reflect our own life experiences, our own attitudes, whether those attitudes have been forged from modeling on our parents or people we've known and so on. That's part of how we get here. I think we all have. I mean, I've certainly had the chance of learning a lot in the time I've been an MLA from other members and in all caucuses in terms of other views, in terms of a host of issues.

On this one what's interesting is that the federal government had undertaken a survey. I know that the Minister of Family and Social Services will be particularly interested in the survey. It was done on October 1, 1998, and submitted to Justice Canada. It was on same-sex issues. You know what's interesting? The poll was a random national telephone survey of Canadians 18 or older. It gathered responses from 1,515 Canadians. This kind of survey has a margin of error of plus or minus 2.5 percentage points 19 times out of 20. So it's a credible kind of survey.

Here's what was interesting. It was found that the majority of Canadians support extending benefits to same-sex couples: 83 percent supported bereavement leave; 76 percent, family or related leave; 74 percent, federal social leave benefits; 70 percent, survivor benefits; income benefits and obligations, 69 percent; rights and obligations of common-law couples, 67 percent; rights and obligations of married couples, 60 percent. Now, what's interesting here is if you look at the survey, it says: legally called spouses, 59 percent. So clearly what you see is, as I suggested before, when you start telling Canadians that we're going to change the meaning of the word "spouse," you'll find more resistence and a lot less support. But it's interesting that on the basis poll it looks like there would be – you might argue there is a majority of support.

The other thing that's interesting because we've chosen not to redefine the word "spouse," is that when Albertans were asked, quote, you said you don't agree with these couples being called spouses; I would like to read you a few alternatives and you tell me which one is most acceptable and second most acceptable to you. The word partner was acceptable to 45 percent; cohabitant, 35 percent; household member, 28 percent; common-law partner, 30 percent; domestic partner, 27 percent. So it's an opinion poll. It's not 1999, but it is only a year ago that the poll was taken, and what's interesting is that it shows an indication of attitudes of Canadians which I think is very consistent with amendment A2, which we have in front of us, Mr. Chairman.

I think that there's been a pretty thorough discussion of the amendment, maybe more discussion than some would like, maybe not as much as others wish, but I think that no member in the Assembly can be said not to at least have had presented to them the arguments in support of the amendment. I might just remind members, the government members in particular, that their Premier has promised that the government is somehow going to solve this issue, and he's charged his four cabinet ministers, I think the Minister of Health, the Minister of Community Development, the Provincial Treasurer, and the Minister of Justice – these four

illustrious legislators are going to, I guess, come up with the answer. So they may come up with something much better, Mr. Chairman. They might.

The Minister of Community Development, a wily and experienced veteran in this Assembly, may come up with a better solution, but you know I don't know exactly what that's going to be. As I look at the horizon, this is as good a model as this government's going to get that allows them to walk the path between being clobbered over the head by another adverse court decision and doing something which creates more problems than it solves.

So with that, Mr. Chairman, I'm going to urge that we now vote on this and then move forward. There are some other amendments to come yet on the bill.

Thank you.

[Motion on amendment A2 lost]

THE CHAIRMAN: The hon. Member for Calgary-Buffalo.

MR. DICKSON: Well, Mr. Chairman, the interesting thing is going to be to see what happens when we finally see the last installment in the fences committee report. When that comes in, it's going to be very interesting, hon. members, to see what creative solutions the government comes up with, Edmonton-Beverly-Clareview notwithstanding.

Mr. Chairman, moving on now, the next amendment I'm proposing would be the amendment that I put forward as A3. I'm not sure. It may perhaps just be being distributed now.

THE CHAIRMAN: You could read it while we're waiting for the distribution to occur.

MR. DICKSON: I'd be happy to, Mr. Chairman. The amendment that I'm proposing to call A3 would be this: that we amend Bill 12 in section 7 in the proposed section 25.01(2) by adding the following after (f):

(g) there is a child who has lived in the relationship and to whom both spouses stand in place of a parent and where the child recognizes both spouses as parents;

(h) one of the spouses was a minor at the time the agreement was concluded;

(i) a reason for making the agreement or provision was the immigration status or citizenship of one of the spouses, or a relative of one of the spouses, under Canadian or foreign law;

(j) a reason for making the agreement or provision was the existence of a minor natural or adoptive child of a spouse.

9:20

Now the reason for this amendment – and I'm moving it, and I'm asking that that be noted as A3, Mr. Chairman – is that it struck my caucus on reading the proposed section 25.01 that there were some other matters that the court should be able to have regard to. What you do when you give to the court an element of discretion is that typically you want to limit the scope of the discretion by requiring that certain tests or certain criteria should be considered, and I think they're relatively straightforward.

The first one is that if there's a child that's lived in the relationship, is it not important – and I know the Minister of Family and Social Services would have probably suggested this amendment if I hadn't put it forward. We heard the Premier this afternoon talking about the importance of children. Well, why would it not be particularly important that if there are interests of a child, they should be addressed? In the existing bill we see that (e) would deal with children of the relationship, but there are often cases where a child comes into a relationship.

You know, we're an amazingly mobile society, and it's not uncommon that people come into relationships, and they have children from previous relationships. So if in fact the government means what it says when it says that we put children first, I expect the Minister of Family and Social Services is going to be encouraging his colleagues to support this amendment. We think it's important that a child who may not be a natural child of the two parties but who has lived in the relationship – if the parents stand in loco parentis, in the place of a parent, there should be protection for that, so that's the part for (g).

Subsection (h), "one of the spouses was a minor at the time the agreement was concluded": we think that's important.

Subsection (i), "a reason for making the agreement or provision was the immigration status or citizenship": we don't think, Mr. Chairman, that the Minister of Community Development would want to be part of a government that would permit someone to enter into an illegal marriage or an illegal relationship to give some person landed status for immigration purposes, and that's the purpose of sub (i).

Subsection (j), "a reason for making the agreement or provision was the existence of a minor natural or adoptive child of a spouse": we think that that's a circumstance again that the court should be able to look at.

So what we're saying is that the court will still have discretion. The court will do what it's going to do, but we just want it to look at these different factors, and there are ways of signaling that these are things that legislators think are significant.

So those are the reasons for A3, and I hope members will find it useful and appropriate to support these amendments.

Thank you.

[Motion on amendment A3 lost]

MR. DICKSON: Mr. Chairman, moving on, we've got a number of other excellent amendments that we'll put forward for the consideration of members of the Assembly. As I say again, you know, our job is trying to help the government pass the very best legislation it can. I said before that Bill 12 has a number of limitations. This would remedy another one.

I'm moving what I'd propose to be A4, and that is that Bill 12 be amended in section 7 in the proposed section 25.01(2)(b) by striking out clause (b) and substituting the following: "(b) either spouse who entered into the agreement did not receive independent legal advice." The Member for Calgary-Fish Creek I see at the moment is interested in this amendment, and I'd encourage her to look at page 3 of Bill 12 and look carefully at the new 25.01. We have a provision here in the (b) part that if the spouse who challenges the agreement didn't have independent legal advice, then that might be a reason for a court to disregard the agreement. Why would it be so narrow? Why would it be so limited? Why would you not do it more generally: "Either spouse who entered into the agreement did not receive independent legal advice"?

Mr. Chairman, in sort of weighing who's going to be advantaged or disadvantaged, we think it's a significant factor if either party didn't receive independent legal advice. So that's the reason for this amendment. I think it's helpful, remedial, as I say, through perhaps not a totally objective analysis but one I put forward as our best efforts to improve a flawed bill.

Thanks, Mr. Chairman.

[Motion on amendment A4 lost]

MR. DICKSON: Mr. Chairman, I've had some members of

government caucus expressing some sympathy that I'm not having more success in my amendments. You know, I remember that first freedom of information bill. I think we put in about 45 or 50 amendments that were all voted down, so this isn't so bad at all. You know, I think the government members are a heck of a lot smarter now than they were in 1994, and that's why I'm holding out some hope that we're going to make a little progress.

Mr. Chairman, the amendment we're moving to now and that I propose to be called I think A5 would be this one that proposes that Bill 12 be amended in section 5 in the proposed section 16.1(5) as follows: by adding "or an interim order," before "or any provision of" and by adding "or an interim order" before "on application by."

Now, the reason is that there are typically two kinds of applications you find in domestic law cases. One is an interim application, and the other is the final application. Interim applications are common because you often are in situations where some interim relief is required, perhaps before there had been all the affidavit material filed, perhaps before there had been cross-examinations and affidavits, maybe before you've got the transcripts from the cross-examinations and affidavits. You know, if there are children involved and that sort of thing, time does not stand still, and it's important to proceed and provide maybe some interim relief. So that's what this would deal with, and it just expands it.

9:30

I'd say to those members like the Minister of Community Development and my friend from Airdrie-Rocky View, who have been following these amendments so darn closely – you know, I have a sense that they're trying hard to work with me to make this bill stronger. I have that sense. There's a lot of positive energy coming from those members in particular and, I know, some other members, Whitecourt-Ste. Anne. I'm feeling that positive energy rolling over me as I speak, Mr. Chairman.

Here's a modest amendment that would just buff up this bill a little bit and provide for an interim order. I challenge any member in this Assembly to offer a compelling reason why we wouldn't want to make some provision for an interim order. It's as simple a proposition as that. If there is any member that would like to offer an explanation, I'd be delighted to hear that presentation. Failing that, I'd just encourage members to . . . [interjection] The Member for Calgary-Fish Creek and I seem to have been in adversarial positions since that initial FOIP tour in the fall of 1993. You know, Mr. Chairman, I'm just not sure why it is that we so often see things in different ways.

MRS. FORSYTH: Because you see it out of rose-coloured glasses.

MR. DICKSON: No.

Mr. Chairman, at some point before either of us moves on to our great reward or life beyond the Legislative Assembly, I hope we're going to be able to be ad idem on an issue.

MRS. FORSYTH: I told I'd buy you lunch once you were elected.

MR. DICKSON: She holds out promises after we leave this place. [interjection] Anyway, I don't want to belabour the point.

This is a very serious amendment. I know we want to move on it right away. Thanks very much.

THE CHAIRMAN: Calgary-Lougheed.

MS GRAHAM: Thank you, Mr. Chairman. I just have one brief retort to the hon. Member for Calgary-Buffalo's proposal in this amendment A5, and that is that the common definition and the common understanding is that the word "order" certainly includes an interim order. So this amendment is an unnecessary one although well-intended, I'm sure.

MR. DICKSON: Mr. Chairman, I'd just like to thank the Member for Calgary-Lougheed for standing up and joining in debate. It feels good to know that I'm not debating this all by myself. So I want to thank her for her observation and her acknowledgment that we are trying to make this bill better.

Thanks very much, Mr. Chairman.

[Motion on amendment A5 lost]

MR. DICKSON: You know, Mr. Chairman, I think that as we move on, the reasonableness and the merit of the amendments just loom larger all the time.

This is the one that I saved. I wanted one amendment that I could go home tonight thinking that there was one moment on Bill 12 when the minds of all legislators sort of fused together, when we came together in one big experience where we saw some merit in doing one thing for Albertans that wasn't currently done in Bill 12.

I'm moving what I propose to be called A7, Mr. Chairman.

THE CHAIRMAN: A6.

MR. DICKSON: A6? Okay. [interjection] Oh yeah; right. Thank you very much. The one I'm moving now is A6.

This would be to amend section 7 in the proposed section 25.01(2) by striking out "if any of the following circumstances apply and the Court is" and substituting "if any of the following circumstances apply or the Court is otherwise." What we're attempting to do with this amendment, which I move as A6, is simply to make the wording clearer in the new 25.01(2). I think the hope is that this would just spiff up the wording a little bit so it would be entirely clear what was intended.

There is a concern now that if you say, "The Court is of the opinion," that means one thing, but it doesn't really communicate what I think the draftsperson wanted to say. I think with respect to what they wanted to say: and if the court is otherwise of the opinion that the agreement or provision would be inequitable. So that's the reason for the amendment. It's just to make it that much clearer.

Thanks very much, Mr. Chairman.

THE CHAIRMAN: The hon. Member for Calgary-Lougheed.

MS GRAHAM: Thank you, Mr. Chairman. With respect to the member opposite's interpretation of what was intended, I would just like to make it clear that, in fact, the intention of the drafter reflects what government intended; that is, the court would only override an agreement opting out of the legislation if both of the enumerated circumstances applied – and, not or. It was intended that both preconditions must be fulfilled. The second one is that the court is of the opinion that the provision would be inequitable. So in fact the intention is that both conditions be fulfilled before the court overrides the opting out agreements. I just say that to clarify for the member opposite what the government's intention is.

MR. DICKSON: Mr. Chairman, I am delighted again to get some discussion on the amendment. I recognize what is the presumed intention of the legislative draftsperson, but I think what we wanted to do was expand, not contract, the discretion of the court.

I have, frankly, a great deal of confidence in the ability of courts

to deal with these matters. You know, it ought to be said now; I neglected to mention it before. All we're talking about in this act, in this bill, and in this amendment is getting in the courthouse door. You still have to go in front of a judge and make your application. A judge is entitled to do a host of things, including denying any relief and dismissing the application outright. I neglected to mention that before. This doesn't guarantee anybody a protection order or a support order.

I do think, frankly, that the amendment expanding the discretion of the judge is a helpful and useful amendment.

Thank you.

[Motion on amendment A6 lost]

MR. DICKSON: Mr. Chairman, it's probably too late to offer a bargain to members. If they'd accepted amendment A2, we could have dispensed with all of the other amendments.

Mr. Chairman, the last amendment that we've got that I'd move, A7, is to amend section 5 in the proposed section 16.1(6) by striking out "the Court must take that change of circumstances" and substituting "the Court must take that change in the condition, means, needs or other circumstances."

This is simply again to clarify what was identified to be somewhat ambiguous wording. I must say that this one was caught by the keen eye of a researcher; I didn't spot this myself. The suggestion was made that we could do a service to Albertans by making clearer what we were looking for in terms of a change that would warrant the court to exercise the jurisdiction they have under section 16.1 in its six subsections.

Thanks, Mr. Chairman.

[Motion on amendment A7 lost]

9:40

MR. DICKSON: Well, Mr. Chairman, I'm sad to report that I've exhausted all of the amendments that I had decided to put in front of the Assembly to improve Bill 12.

As I said before, we have done our level best to take advantage of the invitation extended by the Premier back in the early days of the session. We put forward a model to deal with further legal challenges, constitutional challenges, Charter challenges. We drafted the wording so it wasn't a vague concept. We spelled it out in as clear a language as we thought possible. We got agreement from representatives of different gay and lesbian community organizations, from church leaders, from legislators in other areas. I can think of some law school faculty members I talked to in helping to draft the initial amendment. What we've done is tried to improve this bill.

I guess I feel the burden of opposition has been lifted from our shoulders, and it now goes back to sit squarely on the shoulders of the government and members of the fences committee. I for one am looking forward with great anticipation to see what the Minister of Community Development and her colleagues the Provincial Treasurer and the Minister of Justice and the Minister of Health are going to come up with.

Now, Mr. Chairman, there may be some change. We don't know. Are we going to have a different Minister of Justice in two months? Maybe we'll have some different ministers in other areas. Does that mean the fences committee will change? Was the Provincial Treasurer on there because he has the biggest calculator in the caucus, or was he on that committee because he has some strong views about these kinds of issues? I don't know. Will the Minister of Justice still be the Minister of Justice, and if he isn't, will he still be on the committee? We can only wait and see. There are lots of people we'd like to nominate for the committee. I look forward to seeing what's going to happen on the fences committee.

I certainly trust that we're not going to hear in this Assembly any suggestion at all, Mr. Chairman, that the Official Opposition didn't do absolutely everything they could to make the laws of this province Charter-proof. The next time a court challenge comes down, the responsibility is going to be put squarely at the feet of the Minister of Justice and the Premier and those men and women who have the fortune or the misfortune to make up the government caucus of the day.

Thank you very much for your patience, and I thank all members for their keen interest in the debate that we've seen on Bill 12 this evening.

Thank you very much.

[The clauses of Bill 12 as amended agreed to]

[Title and preamble agreed to]

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

SOME HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed?

SOME HON. MEMBERS: No.

THE CHAIRMAN: Carried.

Bill 22
Health Professions Act

THE CHAIRMAN: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Mr. Chairman. I have both comments and amendments which I would like to bring forward. I'll deal with my comments first. They arise out of the discussions in debate at second reading. Then for the remaining time that I have, I'll deal with some amendments, which are now being distributed.

I want to, if I can, go through some of the questions that arose during second reading and deal with some of the specific questions and then make some general comments regarding the bill. If I can put the questions into a number of different areas, the first sort of general area the questions came up in had to do with the logistics of the bill, sort of generally speaking. Why is the government proposing this legislation? Why has the government combined legislation for all health professions into one act? Legislation is complicated, and there are cost implications: I'll address that. Does one size really fit all? Is this an attempt to undermine the principles of professional self-governance?

While the process of the consultation initiated by the release of the first Health Workforce Rebalancing Committee discussion paper may have gotten us off to a rocky start, it was never part of the government's agenda to abandon the principles of professional self-governance, and I think that that's a key to this whole process. This process began about five years ago, and self-governance was then and is now paramount in the legislation. There is nothing in this legislation that undermines in any way self-governance of these health professions. This is serious business. It affects the rights of practitioners, employers, and consumers. The decision to delegate professional self-governance must be based on considerations of public interest.

It's been pointed out at second reading that the legislation is

undoubtedly complex, but the complexity reflects the complicated task we set for ourselves five years ago. We wanted to develop an act that would set a common structure and provisions for the delegation of professional self-governance that applied to all health professions. There are basic things involving accountability and fairness and natural justice that apply to all health professions, such as public representation, the role of the Ombudsman, which is new to the process, the process for registration and assessment of applicants, investigation of complaints, and the holding of disciplinary hearings. The act needs to have the flexibility to accommodate differences between professions, for example, entry requirements, scopes of practice, restricted activities, and professional colleges, which is the functional organization within each of the professions.

That's why, as a number of members noted, there is a fair amount of work yet to be done. In fact, I would guesstimate that there's probably almost as much work to be done after this legislation is passed as there was prior to the legislation being passed. There are a good deal of regulations that need to be developed on this, and there will have to be bylaws developed by each of the colleges. I have stated publicly a number of times before that I anticipate the earliest that any of the newly formed colleges will be up and running will be anywhere from a year to 18 months from now, and it could be as long as two years to 30 months before all of the various sections of the act are proclaimed and up and running. So it has been a long process; it will continue to be a long process.

9:50

Let me comment very briefly on the whole issue of regulation though. The regulations that are developed under this act are substantially different than regulations developed under other pieces of legislation in that the whole issue of self-governance is of paramountcy in the act, and there are no regulations developed in this act that are not developed completely in consultation with the various stakeholder groups.

In fact, the regulations that would be common to all professions will be subject to the same broad-based consultation that we've been through for the past number of years. Even the regulations that are within the specific schedules that apply to each individual college, differentiating them from one another, will also require broad-based consultation among stakeholders. Those stakeholders would be other health professions, employers, regional health authorities. There even is in many cases some consultation that goes on with consumer groups and patient advocacy groups. Ultimately, the regulations, then, will have to be approved by government. So there is broad-based consultation, and all of the regulations that will accompany this legislation will have that broad-based consultation right across all sectors.

Someone brought up the whole issue of cost implications. There are cost implications in this legislation. Professional self-regulation does have a cost, and we recognized that in the early consultation process. Professions have recognized it too. One approach is to combine professions under one regulatory college. Podiatrists, for example, will be regulated by the College of Physicians and Surgeons. As the process develops, there still is opportunity for colleges to join under one umbrella. There is opportunity for colleges to maintain their independence but perhaps share some of the costs involved with other colleges that would be of complementary style to their own.

In the past the government has supported regulation of some professions through statutory boards and committees, such as those under the Health Disciplines Act. Over the past several years, however, like other provinces we've moved away from this model, and the professions have supported it. The goal when establishing a regulatory college is that the college should be self-financed.

Another series of questions that were asked during second reading: legislation identifies restricted activities which involve risk to the public. Why are unregulated practitioners permitted to perform these, and how will the public know whether or not the person providing the restricted activity is registered or not? I think this is probably the crux of the issue. This has been something that has had broad public debate. The Alberta Association of Registered Nurses has raised a number of concerns around this area. I'm pleased to advise members that when I introduce my amendment later on this evening, the issues raised by the Alberta Association of Registered Nurses will be addressed in the amendment. I have been in consultation with them as late as this afternoon, and I have been advised by the president of that association that with the amendments I'll be introducing tonight, the AARN no longer has concerns with this section of the act. I'm very pleased that we were able to work together on that.

During the development of restricted activity, situations were identified where it would be appropriate and necessary for nonregulated practitioners to be involved in the delivery of restricted activities. The situation of students learning to perform a restricted activity and the provision for emergencies were readily accepted. More problematic was the issue of how and to what extent unregulated practitioners should be permitted to perform restricted activities under supervision. While we did not want to create a situation where a professional could provide nominal supervision of an unregulated practitioner, we also wanted the flexibility to allow unregulated practitioners to participate in the performance of restricted activities under appropriate supervisory conditions. There is a teamwork concept that is used broadly within health care, and there are often different individuals working together as a team, some of which are regulated and some unregulated. That's why it's necessary to be able to deal with the whole issue of supervision, and as I said, I will be dealing with that under the amendments.

The AARN has indicated major concerns with the wording in the current bill in that it could permit supervisory arrangements that would involve minimal participation of the supervising professional. During the past week I've been working with the AARN. As a result of these discussions, we've developed an amendment to the act that will put limits on the ability of unregulated practitioners to provide restricted activities under supervision and on the ability of professionals to supervise these individuals. The amendment will address the concerns of the nurses while at the same time ensure that there is sufficient flexibility to accommodate the needs of the health care system and other professionals. As I indicated earlier, the AARN has advised me this afternoon that they are satisfied with the proposed amendment and are withdrawing their opposition to this legislation.

The next series of questions. What is the impact on professional self-governance? How will regulations, bylaws, codes of ethics, standards of practice be developed? What protections are there to ensure that interests of the members of the college are addressed? There are many provisions for regulations. Is this government by regulation rather than by having issues brought into the House? Those are a series of questions that were gleaned from second reading debate. Like all professional statutes the act contains provisions for professions to make regulations to govern their members. This is fundamental to professional self-governance. Regulations will be made by the profession's council and must be approved by the Lieutenant Governor in Council. The process for developing regulations will involve consultation with the membership of the profession and other stakeholders.

The act does not require ratification of regulations by the member-

ship. This does not mean that the membership is not involved in their development. Clearly it would be unwise in the extreme for any profession to develop and attempt to enforce a regulation where it did not have the commitment of its membership. That, however, needs to be achieved through consultation and communication as regulations are developed, not through the mere ratification of a final product. Obviously that is a crucial part of the government's process and the Lieutenant Governor in Council in ensuring that before the Lieutenant Governor in Council approves the regulations brought forward by colleges, they provide some evidence that these regulations have been passed by and have the approval of the majority of their members.

Concern has been expressed with the appropriateness of having so much addressed in regulation, and I made earlier reference to that. The ability of regulatory colleges to make regulations is essential if they are to govern their members. Bylaws are made by the council and approved in accordance with a process set out in the bylaws. The act does not set out a single process for all professions. There are differences among professions now in how bylaws are made and approved, and those differences will, I'm sure, be maintained into the future. Bylaws and their approval are matters that each profession needs to work out for itself.

I know that the Member for Spruce Grove-Sturgeon-St. Albert in her discussion expressed some concern that she had with a psychologist in her constituency indicating that the act would allow for the college to basically appoint all of its officers. That's true, hon. member. On the other hand, if you look in the bylaw section of the act, the act also has a section that will deal with the process for adopting bylaws. So before the act is proclaimed, the college will in fact develop a series of bylaws. The main bylaw is: what is the process for adopting and changing our bylaws? Some colleges will leave that up to the council; other colleges will require ratification by the membership. That will be included in their bylaws. It's no different than when you set up a society under the Societies Act. One of the first things you develop is a constitution, and in that constitution you define what the process is going to be for election of your officers or appointment of your officers or for changing the constitution.

The same thing will apply here. So before they initially get up and running, they will have to work that out with their membership, and again if they're not able to work it out with their membership, then the government, in proclaiming this section of the act, will defer until that has been resolved internally.

10:00

Codes of ethics and standards of practice are very near and dear to the hearts of regulatory colleges. The intention here in the legislation is very specific: that these issues are developed by the council and they are developed in the form of bylaws, not regulation. There is a provision in the act where the council must consult with its membership and with the Minister of Health prior to adoption of a code of ethics and bylaws. It is this consultation process that we see as being very critical.

Another series of questions. What is the role of the regulatory college? Will colleges have a role in advocating on behalf of the profession? Will colleges be involved in assessing work environments and, if so, in what way? Well, the act clearly sets out that the role of the college is to regulate members of the profession in the public interest. Other roles cannot conflict with this basic requirement, thus a college cannot also negotiate collective agreements.

Can a college advocate on behalf of the profession? Certainly. They do now. They advocate on behalf of standards and issues in the health system. They do this now. The legislation does not prohibit advocacy in this manner, but that advocacy must not be in conflict with the college's primary responsibility to regulate its members in the public interest. Some colleges have found it appropriate to establish a separate organization whose role is to advocate on behalf of the members of that profession. The most obvious, the AARN, I referred to earlier. The AARN is the regulatory body, and then there are unions that represent and advocate on behalf of the members. So there's a clear distinction there.

[Mr. Herard in the chair]

The same thing with physicians. The Alberta Medical Association advocates on behalf of its members, and the College of Physicians and Surgeons is there to protect the public interest. There is an advocacy role, but it is subjugated by the very clear role that the college plays in protecting public interest.

Will colleges be involved in assessing work environments? Yes. If the profession has regulations authorizing practice visits, those visits may involve some assessment of the work environment. Where the work environment is a publicly funded facility, the act requires that there be agreement from the person who controls or operates the facility.

The act no longer addresses the requirement of registration for students, and some professions have indicated that they need to register students. Well, Mr. Chairman, although the act does not refer to a requirement to register students, it is still the case that students who practise restricted activities without supervision must be regulated. The most obvious example of that is advanced physicians in the last year of their internship. They are not licensed physicians at that point in time, but they do now practise restricted activities without direct supervision, so they would have to be registered under the act.

Professions also have the ability to establish student categories and regulation. These students will be subject to the regulatory control of the college. Students who perform restricted activities without supervision would have to be registered, and whether colleges regulate other students is something they need to address in the consultation with educational institutions and other stakeholders. Again, it's permitted under the act, but it's not made mandatory under the act.

Colleges may also establish student categories and bylaws if the intent is only to create an interest or social register, and some colleges may feel that's a good way to introduce new people into their profession. If they're students, they can register them as a student member, have a category under regulation whereby the student members will receive their monthly publications and be invited to social events but will not have all the obligations of a registered member. Many professions have reserved a student title in their schedules in contemplation of regulating at least some students.

The act gives the complaints director the power to require a member of the college to undergo an assessment if the complaints director believes the member to be incapacitated. One of the members asked: what is the reason for this provision, and does it not give a lot of power to the complaints director? Well, the intent of this mechanism is so a profession may deal with an incapacitated member without having to rely on the discipline process. Clearly the provisions for incapacitated members give the complaints director considerable power, but we felt this was appropriate considering the potential for harm to the public that may result from an incapacitated health professional. The complaint director's authority is subject to appeal and cannot be exercised arbitrarily.

We will also be proposing an amendment, which I will get into

later this evening, to clarify that "incapacitated" means the practitioner is unable to provide safe and competent professional services. The intent is to allow regulatory colleges the flexibility to deal with practitioners humanely and responsibly without having to go through a costly and adversarial disciplinary process. If the regulated member chooses not to co-operate, the college can resort to the . . . [Mr. Renner's speaking time expired]

I see that my time is up. I'd be more than pleased to hear from the member opposite, or I would be also pleased to take my place and introduce my amendments forthwith.

MS LEIBOVICI: Well, I'm not sure if that was an invitation just so the Member for Medicine Hat can finish his speech, in which case, I'm willing to do that, and then we can hear what the amendments are, but I'd like to hear more of his comments.

MR. RENNER: Thank you, hon. member. I appreciate the co-operation. I just have a few other brief comments to make. Mr. Chairman, this bill is just about 300 pages long, so it's difficult to take everything and boil it all down.

Another question that was asked was: how will public members be selected for appointment, and will the choices be politically motivated? Well, Mr. Chairman, I have to point out that the government has been appointing public members to professional governing and disciplinary bodies for many years. The process will not change. In all of our consultations – and believe me, we've had a lot of consultation over the last five years – no one has raised the concern that these appointments have been made on a political basis. In fact, the appointments of public representatives are brought forward by the colleges themselves and ratified by the government. The Health Professions Act will increase the demand for public members. The government and professions will need to work together to obtain suitable candidates for these public member positions and develop a process for selecting appropriate appointees.

I mentioned when we were at second reading that there is an even stronger public component under this act, so not only will there be more public representatives required, but the act also provides that the expenses and honorariums of public members that sit on the councils of each of the colleges are paid by the government. So it's very clear that their representation on those councils is there to represent the public. Under the current legislation in many cases the expenses and honorariums are paid by the college, and some have suggested that that could pose a conflict of interest.

Finally, there were questions asked around the business arrangements, and it was pointed out – and I don't disagree – that the provisions are very complicated. One of the members asked: why are some professions allowed to establish professional corporations but not others? The barriers to interprofessional practice seem to still be there. Well, Mr. Chairman, the provisions for the establishment of professional corporations exist in current legislation for physicians, dentists, chiropractors, and optometrists. Those identified professions cannot incorporate themselves into a business corporation, and I think I actually talked about this when we were talking about the Partnership Act a few days ago. Those specific professions that are allowed under legislation to form professional corporations are at the same time prohibited from forming business corporations. Members of all other health professions can establish an ordinary business corporation.

10:10

Changing the provisions for professional corporations is really not feasible within the context of this current initiative. Therefore, the act maintains the provision in the current legislation for professional corporations. So what I'm saying is that the status quo is carried forward into this act. If at a point in the future there are changes contemplated to professional legislation, obviously those changes could be made consequentially to this act, but it's an entirely different issue. It's so much separated from the whole concept of regulating health professions that it wouldn't be appropriate to deal with that at this point in time.

What is new is the provision for practice in association. This clearly establishes the basic premise that professionals may associate in practice unless there are limitations set out in regulations, codes of ethics, or standards of practice under the act. Clearly what we are doing with this act is moving the yardstick ahead, encouraging professions to work together, practise in association where in the past not only has that encouragement not been there, but in fact the legislation in many cases prohibited or discouraged those kinds of practices. So we do look forward to seeing greater co-operation among the professions after this act is in place.

At this point, Mr. Chairman, I would like to move into the amendments that I have. All members have had copies circulated to their desks. I'm not intending to go through these item by item, but I would like to highlight some.

Mr. Chairman, I would move that the amendments, all three pages – there are actually five pages; they're printed on both sides. I'd like to move these amendments as one amendment.

THE ACTING CHAIRMAN: Okay. Hon. member, we will label that amendment A1, and we'll deal with it in one vote.

MR. RENNER: Thank you. Mr. Chairman, if I can deal with these section by section, and on some I will be very brief. The first section deals with (a) a grammatical error. Section (b) deals with something that I mentioned earlier in my comments where it could be misconstrued what an impairment means when dealing with the issue of a professional that is impaired. This is in the act under provisions of incapacitated. When it says that the ability of a professional is impaired, that may not impair in any way the health and safety of the patient. So we're adding the terms "in a safe and competent manner" after "professional services."

In section B we're amending section 12 of the act. In (a) we strike out "a meeting of a council, a complaint review committee and a hearing tribunal and a panel of any of them" and substitute "an appeal under Part 4 before a council, a ratification of a settlement and a review by a complaint review committee and a hearing by a hearing tribunal." The purpose for this, Mr. Chairman, is just to make it very clear that an appeal under part 4 before a council needs to be included in the 25 percent minimum requirement for public representation. So it's really for clarification more than anything.

Then (b) and (c) of this section have to do with grammatical changes that result from changing the wording in (a).

In C we're striking out "Provincial Mental Health Advisory Board" and substituting "Alberta Mental Health Board." This change was made after the act was drafted. It's just straightforward.

In D we are dealing again with the public representation. This clarifies that when a hearing tribunal is in process and the term of one of its members expires, that member may continue to serve on the hearing tribunal until the specific complaint has been dealt with. It just clarifies that the complaint and the hearing have precedence.

In section E we are clarifying voting members on the advisory board. We identify that there are 12 persons appointed as voting members, so when we deal with quorums we're talking about voting members.

THE ACTING CHAIRMAN: Hon. member, sorry to interrupt you.

Would this be a convenient place to revert to Introduction of Guests? All in favour?

HON. MEMBERS: Agreed.

THE ACTING CHAIRMAN: Opposed?

head: Introduction of Guests
(reversion)

THE ACTING CHAIRMAN: Edmonton-Ellerslie.

MS CARLSON: Thank you, Mr. Chairman. This evening we are joined by Sam Gunsch. He is here representing the Canadian Parks and Wilderness Society and is looking forward to hearing the debate on Bill 15, particularly the debate on the 40 or so amendments that we will be introducing. I'd ask him to now please rise and receive the traditional warm welcome of this Assembly.

THE ACTING CHAIRMAN: Hon. Member for Medicine Hat, thank you.

Bill 22
Health Professions Act
(continued)

MR. RENNER: Thank you, Mr. Chairman. The next, F, deals with a clarification, cancelation of a practice permit. The draft indicates that if an individual does not pay their dues, their registration and practice permit may be canceled. Well, obviously we wouldn't want to cancel the registration and have to go through the whole process of requalification, so only the practice permit need be suspended.

In G – that's section 46 – there are provisions there that deal with mandatory registration. A number of those came about as a result of the consultation process, but we had discussions with dietitians and nutritionists who pointed out that, like some of the other provisions in this section, their members do not necessarily provide their services directly to the public but nevertheless are providing professional services. So there will be a provision added under (ii), adding "food and nutrition professional services that are used by other regulated members and individuals to provide services directly to the public." It's a provision very similar to the one that deals with the manufacture of dental appliances.

In H it's just a correction in reference of numbering.

I is a grammatical change.

J deals with the same thing that we discussed earlier in the Forestry Profession Act, when an individual investigator can receive copies of documents. However, if there's reason to believe that the originals are not legitimate, have been altered in any way, the investigator may take away the originals "to perform tests on them" and then must return them within a reasonable period of time.

In K we're dealing with a hearing. The act states that "the investigated person must appear," and we're adding the provision "may be compelled to testify," just to make it very clear that the individual not only must appear but is compelled to testify. I would point out at this point that there are also provisions in the act that make it very clear that testimony given by an individual cannot be used against that individual in court proceedings.

In L it's the same kind of situation, talking about "and to be sworn and answer questions." So it's the same kinds of provisions as K.

10:20

In M it's a grammatical change.

In N it's a change in reference.

O is for clarification purposes.

P is just for clarification to ensure that "panel" is also included.

Q deals with the title "doctor" by pointing out that the subsection

> does not apply to a person who uses the title "doctor", "surgeon", "pathologist" or "oncologist" or the abbreviation "Dr." alone or in combination with other words in connection with teaching, research or administration.

Now, R is where we get into the issue that has been raised by the AARN. If I can refresh everyone's memory here, the section on restricted activities indicates that

> no person shall [supervise] a restricted activity . . . unless
> (a) the person performing it
> (i) is a regulated member . . . authorized to perform it . . .

and then it goes on to say that

> (b) the person is performing it
> (i) with the consent of, and
> (ii) under the supervision of,

a regulated person. I pointed out when I spoke at second reading and the AARN has also pointed out that that is in fact too loose and that the onus is then on the individual professional to determine whether or not the level of supervision is appropriate for the circumstances.

I am proposing in R that section 130 be amended by striking out "and respecting how regulated members may supervise others who provide restricted activities with their consent . . ." and by adding after clause (c)

> (c.1) respecting
> (i) who may perform restricted activities under section 4(1)(b) of Schedule 7.1 of the Government Organization Act with the consent of and under the supervision of a regulated member, and
> (ii) how regulated members must supervise persons referred to in subclause (i).

Then if you go to the next, S also deals with the same issue. It amends that section in the Government Organization Act by making it very clear that the person who is performing a restricted activity is doing so only under the supervision of a regulated professional who is authorized to do so under regulation of their college, and the person performing the restricted activity has been identified under regulations of the college as well.

This means in the case of a student that the college would be able to establish regulations on how their members supervise students and then clearly identify students. If in the opinion of the college it's not appropriate to be consenting to or supervising anyone other than students, then they simply do not have regulations applying to anyone other than students. This very clearly deals with the issue brought forward by the AARN, because it is entirely up to the college, such as the AARN, to determine whether or not their members are going to be supervising and giving consent to others in the provision of restricted activities.

[Mr. Tannas in the chair]

The next section deals with again some clarification having to do with councils, panels, and committees.

In the next we're dealing with changes in the College of Alberta Denturists, removing "assess and diagnose" and substituting "assess, diagnose and treat". This is to bring the legislation into conformity with federal narcotics legislation.

In V we're correcting a grammatical mistake, a typo. In (b) we're dealing with the "practice of medicine," again to bring it into conformity with federal legislation.

Finally, in the final section we are correcting some words that have been left out, adding a review or an appeal or a hearing, so it's in conformity with the rest of the legislation.

That is the amendment. All of the items that I have dealt with

today have arisen as a result of the distribution. In the same way that the act was developed in consultation, these amendments were developed in consultation with a number of the colleges and members who have contacted us over the past couple of weeks since the act was introduced. Most are of a fairly administrative nature, with the exception of the amendments regarding the restricted activities. I want to make it very clear that no one will be supervising anyone else doing a restricted activity unless that individual's college authorizes them. In addition to that, the individual college must not only authorize the supervision but can also identify who the individual is that can be supervised. It's covering both aspects off.

With that, Mr. Chairman, I look forward to comments from other members.

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

MS LEIBOVICI: Thank you, Mr. Chairman. I rise to speak to the amendments put forward by the Member for Medicine Hat as well as to the bill itself in terms of generalities. I tried to listen carefully above the din to what the member was saying and may have to review in *Hansard* as well some of the remarks to see whether in fact all the concerns that were brought forth in second reading have been addressed as well as some of the concerns that have been brought forward by various groups since the introduction of Bill 22 into this Legislative Assembly. I've said it before, and I will repeat it, that I think the member has attempted to, in some cases valiantly, address a majority of the concerns that have been put forward, but there are some concerns that are still outstanding that I believe need to be addressed in order to give this bill perhaps the full level of confidence that is required in order to ensure it succeeds.

It is a huge piece of legislation, it is a mammoth undertaking, and it is in a sense a change in direction with regards to the 30 professions that are covered under this bill. There is a fair degree of healthy skepticism within the communities as to whether or not this bill will work, but I believe there is a commitment by the majority of the professions to see if in fact it can work and whether it can break down some of the areas that have provided difficulties amongst the professions over the years.

The issue of governance, however, I do not believe is addressed within these amendments or addressed satisfactorily within the remarks the Member for Medicine Hat put forward. I believe one of the key problem areas within the bill is the fact that a lot is left to regulation and a lot is left to the power of the councils of the colleges to make those bylaws and make those regulations, as the member pointed out, without necessarily the input of the membership. That is a huge concern amongst some of the professional associations, especially the psychologists, with regards to the ability of a council of a college to enact bylaws and regulations that affect their ability to practise and in fact govern their own internal abilities without any checks and balances within the system. For instance, council could – and if this is not the case, the member can address this in future debate on this bill – in fact decide that they will provide themselves the per diem of $500 to deal with activities. There is nothing that I see within the act that prevents it, other than perhaps the overseer function of the Lieutenant Governor, and that may not in fact happen. So the concern with regards to governance that has been put forward is a major concern, and potentially in the amendments that we will be bringing forward, we will attempt to address that concern. Those amendments are not here tonight however.

10:30

The other issue that is of major concern as well is with regards to the restricted activity clause, though I understand that the registered nurses who brought that complaint forward are in fact satisfied with the amendment that has been put forward by the Member for Medicine Hat. In looking carefully at the amendments, I would have thought that an amendment that made it very clear that restricted activities that are performed are performed as assisting those who are entitled to perform that restricted activity would have been clearer than the rather circuitous way of addressing the issue that we see in front of us.

In fact, a question that I would appreciate some clarification on is in schedule 7.1. When you look at the regulatory-making powers in section 3 on page 90 of Bill 22, it indicates:

> On consulting with the Health Professions Advisory Board under the Health Professions Act, the Minister may make regulations authorizing a person . . . other than a regulated member . . . to perform one or more restricted activities.

Then how does that mesh with the college having the ability? Actually the sole onus appears to be on the college to make those regulations. So if there can be some explanation as to how those two sections do not in fact contradict each other, that would be appreciated.

The majority of the amendments that the member has put forward, other than that particular amendment with regards to the restricted activity, are in fact grammar explanatory. There are some changes that are more than that. However, I have heard that these have been requested by some groups and that this is a response to clarification within the bill as it now sits.

Again, I commend the member for bringing forward amendments to the bill at this point in time as opposed to later, when there may be conflicting interpretations that will make it harder to implement the bill. My best guess, however, is that we will be seeing this bill in some shape or form back in this Legislative Assembly, if not in the fall session within the spring session, as more kinks within the bill are worked out. Some of the issues that have been brought forward by the various groups, whether it is the opticians, the ophthalmologists, the optometrists, the emergency medical response professionals, the nurses, as we saw just recently – whether it is on behalf of psychologists or some other group, we will in fact see that there are other areas that have been difficult to implement and may be impossible to implement given language within the bill. An observation was made to me just this afternoon that if the bill is not tight in its construction and in its wording, then it may allow for regulations to be put in place that contradict the intent and the goodwill the member has indicated with regards to how this bill will in fact be implemented.

So those are cautionary words. We have amendments as well that we will be bringing forward. As the amendment that has been brought forward with regards to section 130(1) and schedule 1 appears to be satisfactory to the concerns of the registered nurses, I will not bring forward an amendment that they in fact have circulated to members within this Legislative Assembly. What that amendment would have done would have made it very clear – and I still think that would have been better language – to ensure that we are looking at assisting in the performance of restricted activities and that students may be able to perform those restricted activities under supervision.

It is a bit of a wait and see at this point. Again, if it is not clear, I'm sure the member will do the right thing in the future and ensure that the language within this bill is very clear. As I was told in another conversation tonight, it's not great, but it'll satisfy some of the concerns.

I know there are other members who would like to address this package of amendments at this point. Thank you.

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

MRS. SLOAN: Thank you, Mr. Chairman. I'd like to begin this evening just by stating my concern that we have had this bill under construction, I believe, for about five years, with a large amount of time, money, and resources apparently spent to attempt to draft it. All of that aside, within weeks of its introduction we find ourselves in this Assembly with a document, five pages' worth of amendments. I hardly think it contributes to the type of debate we should be striving for in this Assembly to have that type of last minute introduction take place, particularly on an act that I would hazard to predict will have more impact, possibly detrimental, on the public in its implementation than perhaps any other act we've seen.

It reminded me of a quotation I came across in a publication called *Honourable Insults, A Century of Political Invective*. The citation went like this. A research assistant expressed his concern to his employer MP that his constituents could not understand from the MP's speech what his view on a particular subject was. The MP responded: "That is good! It took me a couple of hours to draft the speech so it had that effect." I would suggest that perhaps what we are attempting to do tonight more than anything else is completely befuddle the public as to how exactly the health professions are going to be governed in this province.

Let me speak to the heart of these issues. The hon. member across the way has proposed amendments tonight to sections 130(1) and 136 that are an attempt to address the restricted activities. I'd like to speak specifically to the amendments proposed to 130(1), where the hon. member attempted to reassure the public that colleges would assume responsibility for the regulation of the unregulated. In essence, what the government is saying is that colleges of professions will be responsible for the regulation and supervision of the unregulated. This is a case of ultimate off-loading, Mr. Chairman. The reality will be that members of professions will pay professional fees and a portion of those professional fees will go to providing the regulation of unregulated practitioners because this government didn't see fit to make that an incorporated part of this act. In essence, it will be professional fees providing or fulfilling a governance responsibility, a responsibility that should have been assumed by the legislators in this Assembly. That is in effect what you are saying, and that is not good enough.

10:40

If in fact what the act is aspiring to is that colleges will fulfill the ultimate responsibility of protecting the public, I would respectfully suggest that they should be allowed to fulfill that responsibility, not have the additional layer of responsibility placed upon them for every variety of hybrid, concocted, untrained, and unregulated professional that might be out there – pardon me; not professional but employee – now or in the future providing services to the public directly. So it's not good enough.

Not only that, Mr. Chairman, but taking the amendments proposed to 130 and the section then proposed in 136, which is speaking, then, to the person performing the restricted activity having to have the consent of or to be supervised by a regulated member, basically that's all defunct by section 3. If you look at page 90 of the bill, under schedule 7.1, 3, health services restricted activities, it says that

> on consulting with the Health Professions Advisory Board under the Health Professions Act, the Minister may make regulations authorizing a person or a category of persons other than a regulated member or category of regulated members under the Health Professions Act, to perform one or more restricted activities subject to any conditions included in the regulations.

So in essence what that says, Mr. Chairman, is that on any given day with who knows what rationale or justification, the government has the power to determine and authorize a different category of personnel not regulated otherwise to perform restricted activities. In essence, these amendments proposed tonight offer no protection of the public, none whatsoever, because the proviso, the opt-out clause is right there in the act, section 3.

I want to make a couple of comments with respect to the health professions advisory board. It is not explicitly encompassed in the amendments before us tonight, and I would certainly question why that is if the government is attempting to aspire to a more comprehensive, gapless piece of legislation. The advisory board's role on page 22 of the bill is cited as being

> on the request of the Minister, [may] investigate and provide the Minister with advice related to this Act and Schedule 7.1 of the Government Organization Act.

No parameters, no framework, no schedule of what that might include. Further,

> the Advisory Board must give the colleges reasonable notice of the matters to be discussed at a meeting of the Advisory Board and allow them to make submissions.

Further requirements are cited that the Board "must be open to the public" and that a "portion of an Advisory Board meeting when submissions are presented must be open to the public."

Now, the hon. member across the way spoke about advocacies and indicated that the college's primary function would be to regulate but that they could advocate on behalf of the membership as they do now, but that can't conflict with the regulatory role. Well, let's just for the purposes of debate, Mr. Chairman, contemplate who or how it would be determined that advocacy would conflict with the regulatory role. The only mechanism in the act that would allow for that review would be the health advisory board. So I would ask the hon. member: could a college in fact advocate for a position or policy that was in contravention to the government? I'd like to hear his response on the record, because I think that's a very important question.

If a professional association or, in the future, a college felt strongly enough about the protection of the public that they needed to take a stand against a government policy, a budget, or some piece of legislation, would they be able to do this under this act without being subjected to a review by the health professions advisory board? I highly doubt it, but I would like to hear the government member state that for the record so that the public and all members of the professions know in fact what their colleges will be capable of in the future.

It's of interest to me that for all of the times that the member cited the Alberta Association of Registered Nurses this evening, there are no amendments made to schedule 24 of the act, which is in fact the schedule that specifically identifies that organization's existence under this legislation. One of the areas that I pointed out in my earlier debate of this bill that is not covered under section 5 of that schedule is the position of president elect. As a member of that association, I'm aware we've just gone through elections for president elect. In effect, that election would be defunct because this schedule does not provide for the maintenance of that position once the legislation is proclaimed, Mr. Chairman.

I'd like to revert to a different section, again in the context of the amendments proposed and the hon. member's attempts to pacify and suggest that no concerns exist. I would like to specifically talk about registration required under this act and mandatory registration specifically as defined by section 46. As that section currently reads – and this must be viewed in the context of the restricted activities and other amendments proposed this evening – administrators, researchers, bureaucrats, legislators that were members of professions would not be required by this act to be registered.

Now, what message is the government sending in that regard?

Why would it be that a manager who was supervising the conduct of a profession on a particular unit or in a particular community, even if they were a colleague and member of the profession, would not as an administrator have to be registered under this act? I'd also like to hear the hon. member's answer to that question, because in essence the current act, as is required by this section, only requires that a person must be registered if that person is providing "professional services directly to the public," manufactures dental appliances, teaches the practice of a profession, provides "the supervision of regulated members who provide professional services."

According to one of the amendments proposed this evening, if I'm correct, there is an amendment with respect to dental provisions, if I recall. I can't find that right at this particular moment. But as far as I'm concerned, if the CEO was a member of a profession and trained in a profession and was conducting and overseeing the operations of a regional health authority, Mr. Chairman, I would suggest to this Assembly that the public would believe it's in their interests and in their safety to have that person as a regulated registered member of a profession. If in fact that person made a decision that ultimately affected the work environment and the configuration of the staffing complement and some type of liability suit ensued, in essence all of the other members of that profession down the line would be subjected or liable, if you will, but that person, because they were in an administrative capacity far up the ladder, in essence could be exempt. That is, again, not good enough.

10:50

Also, the amendments proposed tonight do not incorporate a definition of association. I know that that term is used in the act. I raised this as an issue in second reading of the bill. The government continues to use that term. Why it is not included in the definitions is still not clear to me. I did not hear the member make remarks with respect to that word in his remarks tonight. It has historically embodied the provision and function of advocacy to the members of professions in this province, and if it's going to be used in the act, then I would respectfully submit that it should be defined, as other terms that are used are defined also.

In the comments made with respect to the ability of colleges to go into work environments, I heard distinctly the government member say that that would only be in the context of reviewing the respective activities, competencies, practice of the members of the profession. That was not the context which I intended. I recognize that that will be a function they will assume, but my intent in introducing that question in the earlier debate on this bill was that if in fact colleges must assume not only the responsibility to regulate their members but the regulation of the unregulated through their supervision and guidance and instruction, those colleges should have the ability as well to review and determine whether or not the environments in which their members are working are conducive to meeting the requirements of their standards of practice and their code of ethics.

Unfortunately, regrettably, Mr. Chairman, I've been in those circumstances where because of understaffing, ultimately underfunding by this government, there were not enough staff to provide even the most basic of care to people in emergency departments, and that happens every day in this province. If the government members want to plug their ears and not listen, that's fine, but it has happened, and it continues to happen. I can be alive to my responsibilities and can understand my requirements under the code of ethics and my standards of practice, but if I'm working in an environment that does not provide me with the physical and human supports to provide that care, really it's beyond my control. If colleges don't have the ability to incorporate that in their consideration of the competencies of members, then again, I believe we've failed the public.

The professionals are only half of the equation. The other half is the environments in which they work, which in my opinion, professionally and ethically, are becoming more and more unsafe. If that reality is not addressed, then all of the goodwill and good work of the professions in this province will be for naught because their members will continue to be in impossible situations and circumstances.

So perhaps if the government is not alive to that issue or chooses, as perhaps the Minister of Justice would like to do, to plug their ears about those realities, the Official Opposition may be called upon to bring that type of provision forward.

There are actually just a couple of other items. The other word that I noted is not defined in the definitions, which again perhaps should have been an amendment this evening, is the use of the term "professional." Now, my experience with that term, Mr. Chairman, has been that it's commonly used as a verb. In the bill itself the government uses it on several occasions as an adjective, but it doesn't define it. It uses it with respect to corporations. It uses it with respect to services. Now, if in fact "professional" is to constitute a regulated member of a profession, then perhaps that term should be specifically defined, but it is not.

With those remarks, Mr. Chairman, I'm hoping I'll hear the hon. government member rise to answer some of the specific questions I've asked this evening, and I'm hoping he'll be alive to the serious issues I've raised tonight. While he seems to be long on reach with respect to the public safety concerns in this act, he's short on grasp. I'm hoping I'll see some evidence that he's going to rise to that this evening.

Thank you.

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

MRS. SOETAERT: Thank you very much, Mr. Chairman. My concerns are brief, and I had a few comments on the amendments and some questions for the member, if he doesn't mind.

I don't see that the concerns that I expressed the other night, the concerns that I asked about the chartered psychologists, are addressed by these amendments. Now, the member sponsoring the bill said that those would come under bylaws. A bylaw is a regulation; is it not? If you don't mind clarifying that again, I'd appreciate that, because I want to send this *Hansard* out to those people so that they have some level of comfort.

From my understanding of your explanation, it would still give the council the ability to appoint its members, and at present the membership elects the council, as I understand it. Under this legislation they could then appoint it. I see the membership's concern that this is not addressed. Now, you said that it's in the bylaws. Are the bylaws in the bill? I don't see them. So if you don't mind clarifying that for me, I would appreciate it.

Thank you, Mr. Chairman.

THE CHAIRMAN: The hon. Member for Edmonton-Glenora.

MR. SAPERS: Thanks, Mr. Chairman. The 22 amendments to Bill 22 do rescue the bill to some extent. I was listening to the hon. Member for Medicine Hat, and it reminded me of the genesis of this bill. I remember being in the first public consultation at Calgary; I think it was at the University of Calgary. It was chaired by the hon. Member for Calgary-Varsity when he was the chair of the Professions and Occupations Council.

I remember that meeting because I remember there was a gathering of some of the leaders in the health professions across the

province, and there were a number of commitments made at that time. There were commitments made that the process would be open, that there would be full involvement and consultation. It even went down to the commitment that there would be transcripts, I think, of the proceedings of those consultations. When the proposal for the health workforce rebalancing was made, it was given a relatively robust defence. I remember the members of the committee being very defensive about the criticisms about cross-training and hurting the unions, hurting the self-governing nature of the professions. I remember the Member for Calgary-Varsity being fairly defensive as well.

11:00

Then I went to another consultation a few months later on the health workforce rebalancing. Again it was the Member for Calgary-Varsity. This time it was at a hotel in Red Deer. It was amazing, Mr. Chairman, how the story had changed. It was just amazing. No longer was there this blind defence of the proposal as it had originally been put forward. Now it was a much more conciliatory stand the government was taking: "We recognize the error of our ways. We recognize that we were trying to force too much at once. We recognize that the proposals were relatively insensitive. We really, really mean it this time: we're going to be open and transparent, we're going to be consultative, and we will in fact pay attention to what the health professionals in this province are telling us."

Well, fast forward about five years, Mr. Chairman, to tonight. We have hundreds and hundreds of pages in Bill 22 with I don't know how many clauses, how many schedules. I think there are close to 30 schedules at the end of the bill. It's a very ambitious undertaking, and it's still flawed to the extent that we need 22 amendments. From what I'm told by some registered nurses, by some people in the field of oral health care, the bill is still flawed. I know that paramedics in Calgary have some concerns. What I wonder is how it could be that we could have at least two cabinet ministers build their careers in part around this process. I mean, the Minister of Labour at the time this started is now the Treasurer. The chair of professions and occupations is now the Minister of Labour. We've got the government whip, who's probably poised to move forward. So at least two cabinet ministers building their careers, and maybe a third pending. How could it be that all that talent and ambition has culminated in a process that still is so poorly resolved?

I'm not inspired, frankly, to confidence when I hear: "Well, you know, there are still some things we're going to do by subordinate lawmaking. There are still some things that are going to be left to regulation because that's the way we always do self-governing things. We don't want to interfere too much in those self-governing professions." You know, this government doesn't hesitate to interfere when regional health authorities don't do their bit. Then they just fire them. I wonder, really, how they feel about self-governing professions. But I do digress.

I'm not inspired to confidence when I hear sponsors of the bill talk about, you know, that they really want to make sure professional activities will be done only under direct supervision or will be done by registered professionals, that the nonregulated people really won't be doing restricted activities and, if they do, they'll be properly supervised.

Then I think about the ongoing debates between denturists and dentists, chiropractors and physiotherapists, optometrists and ophthalmologists. Then I think about how this government has been relatively ineffective in getting those groups together. Echoing in my ears, Mr. Chairman, are the concerns that I hear from so many of our health workers, who say: "What's happening with all of this is that we're going to be cross-trained and multiskilled right to the point where we're going to be jacks-of-all-trades and masters of none. We're going to be considered interchangeable." Then when it turns out that the proper level of care isn't being provided because we've pushed it down and pushed it down and pushed it down to the lowest common denominator, there'll be this second deluxe tier that will pop up. Of course that will be in the private sphere; it won't be in the public sphere.

Then the government's agenda will be complete, which all along has been to create a situation where the public system is a poor cousin to a Cadillac private system paid for by those who can afford it, as opposed to a well-funded public system available to provide high-quality service to all of us.

As far as the amendments go, Mr. Chairman, as I say, they correct some of the deficiencies. They don't go far enough in the opinion of several of the observers who have made their thoughts known to me. It is five years plus in the making. Members have gone through two previous discussion bills. Through the chair, is it one or two? [interjection] That's right. The first proposal was never tabled in the Legislature, was it? So I would really be interested to know how many person-hours have been involved so far on this, how many dollars have been spent through Labour and Health in professions and occupations to get us to this point.

I would make this prediction. This is not the last time we'll see amendments to this bill. I will be absolutely bold in this prediction, Mr. Chairman: once the government uses its majority to pass the Health Professions Act, we will see an amending bill at the first opportunity. In other words, the first time this House is convened in a session subsequent to this bill, I'll bet you dollars to doughnuts that we're going to see a whole host of other amendments. That follows the pattern, of course, of this government with health legislation. The legislation is either so bad that it's just pulled before it's allowed to go to a debate in the House, or it comes back, as even the original legislation that created the health authorities did, so heavily amended that it looks like an entirely different piece of legislation.

So I would hope that at some point the government will get this right. Of course, the Official Opposition is here to help. I know we have some amendments of our own coming that will add some more credibility to this bill. I am anxious to get on to those helpful amendments, so I will take my seat.

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

MRS. SLOAN: Thank you, Mr. Chairman. There's just one other major aspect that the bill has not addressed and amendments provided this evening do not address that I believe is worthy to enter into the record before we proceed further. It very much is rooted in a desire to see this bill ultimately protect the public in the broadest sense.

There are many cross-references in the bill currently about how the different schedules interact and also how this bill interacts with the Government Organization Act. One of the things I find of interest is that there are no references as to how this act interrelates with the Alberta Labour Relations Code. For all members' information, the health sector . . .

THE CHAIRMAN: Is this on the amendment, hon. member?

MRS. SLOAN: It is.

Chairman's Ruling
Relevance

THE CHAIRMAN: We're on amendment A1, and these are items

that are not in the amendment, so we don't address them until after, when you have the opportunity to propose amendments or to reflect on them. You're supposed to be making your comments relative to amendment A1.

MRS. SLOAN: Mr. Chairman, A1 is five pages long. It is an omnibus amendment of sorts. We're talking about 22 amendments that cover the whole range and application of this act. Over 40 sections of the act are affected. I am relating that to a section in the Labour Relations Code, which ultimately, I think, should have been referred to, as it applies.

I think the context in which the Assembly has agreed to debate these amendments tonight has been very broad. In the health sector there are five functional bargaining units. How those five functional bargaining units are defined is on the basis of the work of people that are in those bargaining units. Now, one of the omissions that the amendment does not address is . . .

THE CHAIRMAN: I don't disagree one little bit with your right to bring all of these important issues before the Assembly and before the committee, but right now the convention is that we deal with the amendment. That's what we're supposed to be discussing. Once it's dispensed with, then we can go on to your issues.

11:10

MRS. SLOAN: Well, with due respect, Mr. Chairman, my intent was to identify it. If the government member chooses to, he could bring forward amendments to address the issue.

THE CHAIRMAN: That's very clear, hon. member. Your intentions are good. They're just put in the wrong place; that's all. The chair was trying to direct you.

MRS. SLOAN: Well, with due respect, when I get five pages worth of amendments . . .

THE CHAIRMAN: Hon. member, perhaps we'll go to another member who does know how to debate according to the rules.

MRS. SLOAN: Five pages of amendments minutes before we come into the Assembly to debate . . . [interjections]

THE CHAIRMAN: The hon. Member for Medicine Hat.

Debate Continued

MR. RENNER: Thank you, Mr. Chairman. One point I would like to clarify. The Member for Edmonton-Riverview has indicated that she had not previously seen the amendments that were introduced tonight. If that's the case, then she should ask the Health critic why that is, because the Health critic had these amendments over a week ago.

Point of Order
Clarification

MS LEIBOVICI: Point of order. Well, the reality is that I didn't have those.

THE CHAIRMAN: Edmonton-Meadowlark, the citation would be?

MS LEIBOVICI: Standing Order 23(h), (i), and (j). That's an allegation that is unfounded in that the member had requested, as they had not been handed out to any other groups, that I not hand them out to my members as well but that I could discuss them in caucus, which I did. So that is why they did not see the specifics of the amendments. I honoured my part of the bargain, Mr. Chairman. [interjections]

THE CHAIRMAN: The hon. Member for . . . [interjections] Order.

MR. RENNER: On the point of order. It's a very literal interpretation of our discussion. I asked that she not share them with the stakeholders. I fully assumed that they would have a caucus discussion about them. If that's the way the comment was interpreted, please accept my apologies.

THE CHAIRMAN: On the amendment, I think, is what we're trying to establish here, amendment A1.

Debate Continued

MR. RENNER: Well, I want to just go through the questions that were asked regarding the amendment. First of all, the Member for Edmonton-Meadowlark asked me to explain the difference between the ministerial exemption on restricted activities in the college regulation-making power for supervision and consent. The ministerial exemption is required to deal with unforeseen circumstances whereby there may be individuals who are practising now. I'll give you a good example.

There are individuals who are practising a very specialized – they are involved in thoracic surgery and heart surgery at the University hospital. There are about four members that are very, very specialized in what they do. They're not part of a regulated profession. They have been there for many, many years, and they're specifically trained. There are only four of them in the whole province. That might be a situation where it might be deemed appropriate for the minister to give exemption. They operate in a very specific, confined atmosphere.

The discussion that we had with the regulatory groups around this whole issue dealt with a blanket ministerial exemption. There was concern that the minister should not have a blanket ministerial exemption, so the groups have agreed that by referring this to the advisory board – and the role of the advisory board is to co-ordinate consultation and facilitate discussion among all the various stakeholder groups. Once the minister identifies a specific instance where he wishes to invoke the ministerial exemption, he goes to the advisory board and asks the board to do a consultation. Then all the various stakeholders have an opportunity to comment and provide input to the minister before that decision is made. So the minister will identify an issue, take it to the advisory board, and all the various stakeholder groups will have a look at that. If everyone is in agreement, then the minister will proceed with the exemption. These individuals in most cases would be practising without supervision. So it's distinctly different.

The regs that the colleges deal with have to deal with the reality of teamwork. It's true. In most cases the individuals referred to are assisting the regulated professionals as they perform a restricted activity. The member asked why we didn't just change the legislation to identify assisting. Well, the problem with that is that "assist" is too broad a term. It could be interpreted in many, many ways. It could be argued that someone who is 50 miles away and performing a restricted activity or a portion of a restricted activity is assisting the professional.

In fact, we have circumstances like that where there are significant portions of restricted activities that are performed now under supervision without having any further regulations in place around the nature of that supervision, and this legislation will in fact

strengthen that situation. It will not be left up to the individual practitioner to determine what is a sufficient amount of supervision in any particular case. It will be up to the college to examine the instances where there are individuals who are assisting in most cases a professional and determine what is an appropriate level of supervision. The college will make that determination, not the individual professional.

The Member for Edmonton-Riverview made comments regarding advocacy, and she asked if colleges would be able to speak out against the government on issues that they felt were of concern to them. The answer is very clearly yes, they can if they feel it is necessary. What they would not be able to do is . . .

MRS. SLOAN: Point of order.

THE CHAIRMAN: Edmonton-Riverview.

Point of Order
Clarification

MRS. SLOAN: Standing Order 23(h), (i) and (j). What the hon. member is indicating is not what I asked. He is in fact suggesting that a college can oppose, can take a position on behalf of their members. What I asked him to respond to was whether or not a college could take a position contrary to the government, whether it be policy, legislation, or a budget, without finding themselves subjected to review by the health professions advisory board.

THE CHAIRMAN: On the point of order, it's really a point of clarification. Once the hon. Member for Medicine Hat completes his remarks, you can rise in your place and list the questions again that you don't feel were answered.

Medicine Hat.

Debate Continued

MR. RENNER: You're right, it's not a point of order, but I will answer the question. The member has got the role of the health professions advisory board mixed up. The health professions advisory board does not have any decision-making authority. They are only there to advise the minister, so the only time they become involved in an issue is when the minister requests they become involved.

One of the main roles of that board will be to deal with requests for new professions that come onto the scene asking to be recognized under this act.

MRS. SLOAN: It doesn't say that.

MR. RENNER: Well, of course it doesn't say that. The role of the advisory board is not one of a disciplinary board over professions. Clearly, that is not their role, and they do not have that role. So to answer the member's question, if a college wants to take a position in opposition to the government, hair on 'em.

THE CHAIRMAN: Hon. members, I wonder if you could address your comments through the chair. That way you don't get involved in these little jousts.

MR. RENNER: I apologize. You're right, Mr. Chairman.

The member also asked about why the term president-elect was not included under the schedule for registered nurses. The schedules that we have before us were all prepared by the respective groups, and if the president-elect position is not included in the schedule, then I would only assume it was at the request of the group involved. Perhaps the position of the president-elect is one that is created under bylaws of the association. I can't answer that question, but I can assure the member that there was very broad-based consultation with the AARN in the development of the schedule related to each of the specific colleges.

11:20

She asked why there is not a definition of association in the act. The only time that association is used in the act is under the business arrangements. I mentioned in my earlier comments that there is the ability under this act for professionals to practise in association, which is an arrangement whereby they would share expenses, perhaps share premises, but they don't share revenues. Each of the individual professionals would maintain his or her own revenue stream, and then they would share expenses. So it's not a partnership in the truest sense of the word, where all the revenue would come in and be shared equally. In the case of a practice in association each of the individuals practising keeps his or her own revenues, but they do share expenses.

Finally, I want to address the issue that was brought up by Spruce Grove-Sturgeon-St. Albert regarding the ability of these councils to appoint their representatives. If the member will refer to section 131(1)(r), I will read that very quickly. It's dealing with the bylaw-making authority of council. It says that "a council may make bylaws," and then there is a whole series of areas in which they may make bylaws. Under (r) it says, "respecting the approval of bylaws." So that refers to my earlier comments.

It's similar to a situation where a society has just been formed and they are agreeing upon the constitution under which they will operate. Key in some of the groups may well be under (r), "respecting the approval of bylaws." It may be that the approval of bylaws will be by a vote of the general membership. It may be in some cases that they will have a series of different types of bylaws. Some bylaws may be within the jurisdiction of the council alone. Other bylaws may require the consultation of the membership. That is the point at which in the original formation under this act, before the section is proclaimed with respect to any of the professions, they will have to determine how it is that they are going to approve any new bylaws. They will have to have evidence for the minister that they have consulted with their members and this is generally what their members want.

I'll give you an example. The College of Physicians and Surgeons historically through the years has left the bylaw-making authority entirely up to the council. The member referred to the psychologists. They have traditionally operated completely opposite. They have traditionally operated on the basis that bylaws have to be approved by the broad-based general membership. Other councils have operated through the years whereby bylaws have to be approved by the members present at an annual general meeting.

So there are a number of different ways organizations set themselves up for bylaw-making approval. Each of them will be different. Because it is in place to deal with 30 different professions who may choose to set things up 30 different ways, it gives them the flexibility to do it that way. Once they have determined how it's going to be in the future, in most cases I would expect they will simply bring forward their existing way of doing business into the new act just as they have in the old act. So that is how the act deals with the issue of bylaws, and the issue she raised regarding the governance and appointments also comes under bylaws.

MS LEIBOVICI: A point of clarification.

THE CHAIRMAN: I don't think there is one, hon. member, but if the hon. Member for Medicine Hat has sat down, it is your turn, so you can clarify all you want.

Yes, Edmonton-Meadowlark.

MS LEIBOVICI: Okay. Well, I can't clarify it. What I can do is ask a question though. Let's be specific with regards to the case of psychologists. At this point it's my understanding that the membership do not have the ability to approve any of the bylaws. When this act is passed, will there be a new council formed or new members appointed to the council of the college? I guess that's where we're having some of the difficulties: understanding what happens in terms of the new college being set up and the council of that college and whether there's the ability to elect those members, or will they be solely appointed? I guess the fear is that if it's a carryover from the current college, what is happening is that there is an erosion of the ability of members to have impact and input into the council. That is what the feeling is. That's where I think it's important to have that clarification. So can you answer that and then just elaborate a little bit more?

THE CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Mr. Chairman. As the act is proclaimed with respect to each of the professions, there are extensive transition provisions in the act. What will happen in most if not all cases is that the existing council, which is there under the old legislation, will transfer into the position under the new legislation. Then there are provisions within the act to deal with the addition of public representation on the council where there aren't sufficient numbers to meet the needs of the act.

The fact of the matter is that there are provisions under this act that are new and are not covered under existing legislation. So I would suggest to the member that for subsection (r) here, where it talks about "respecting the approval of by-laws," if the psychologists have concerns with the way their council is conducting its business under the existing legislation, the opportune time to raise that concern would be to the minister as the proclamation is taking place and the transition is taking place. The minister would then ensure that those concerns are addressed before the proclamation takes place.

THE CHAIRMAN: The question is on amendment A1, an amendment to Bill 22 as proposed by the hon. Member for Medicine Hat.

[Motion on amendment A1 carried]

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

MRS. SLOAN: Thank you, Mr. Chairman. If I may, I'd like to continue now, if this would be an appropriate time, to talk about the definition of work as outlined by the Labour Relations Code and the fact that this act does not make reference to it, but I believe inherent in the provisions of this act we will find it has a direct impact on the definition of work in the five functional bargaining units that exist in the health sector of the Labour Relations Code.

In essence, currently certification of members, professionals within those functional bargaining units is determined on the basis of their work. What in fact the Health Professions Act does is effectively blur the boundaries of work not for just a single profession but for multiple professions, Mr. Chairman. So specifically those professions that currently enjoy certification rights under the five functional bargaining units, I would like to know how this act will affect those certification provisions and whether or not in fact an organization will be able to go before the Labour Relations Board and argue the definition of work that is currently a tenet of achieving certification for that particular unit.

11:30

In essence, what I think the government is constructing is a process where by blurring the definition of work, we then make in essence as a result the existence of the five functional bargaining units in the future to be mute. Now, we haven't seen that the member has addressed the firefighters and paramedics who have written correspondence to us. They're one group that is affected. In essence, I think there is yet another chapter to the evolution of this initiative.

The Health Professions Act, before us this evening, is just one component of it. I think the future components will be brought forward by the Minister of Labour, and those will be to in effect collapse bargaining units, which will result in the amalgamation of contracts and subsequent repercussions for the certified bargaining agents in those particular sectors. Now, I hope I'm proven wrong, Mr. Chairman, but I have been in the health sector long enough with this government that I have a healthy distrust of this government's agenda when it comes to professionals and the provisions of environments that will enable professionals to provide safe, competent, and ethical care to Albertans. So if the government would like to go on the record with respect to that particular area, I'd be more than happy to hear their remarks this evening.

Thank you very much.

THE CHAIRMAN: The hon. Deputy Government House Leader.

MR. HAVELOCK: Yes. Thank you, Mr. Chairman. I'd like to move that we adjourn debate on Bill 22 and that when we rise and report, we report progress on this bill.

THE CHAIRMAN: The hon. Deputy Government House Leader has moved that we now adjourn debate on Bill 22 and that when the committee rises and reports, we report progress on the same. All those in support of this motion, please say aye.

SOME HON. MEMBERS: Aye.

THE CHAIRMAN: Those opposed, please say no.

SOME HON. MEMBERS: No.

Bill 23
Pharmacy and Drug Act

THE CHAIRMAN: Are there any questions, comments, or amendments to be offered with respect to this bill? The hon. Member for Banff-Cochrane.

MRS. TARCHUK: Thank you, Mr. Chairman. The purpose of Bill 23 is to split the Pharmaceutical Profession Act into professional provisions for purposes of the Health Professions Act and facility and drug provisions for the purposes of the Pharmacy and Drug Act.

A number of questions were raised during second reading that are not relevant to Bill 23 as the bill does not contain any reference to these topics. Firstly, research in the pharmaceutical industry; secondly, advertising; and thirdly, dispensing fees are not contained in law; they are negotiated. However, there were other relevant questions asked during second reading, and I can offer the following responses.

Do the pharmacists support the bill? The pharmacists are satisfied that the bill covers the items they have raised pertinent to the draft. Although the Alberta Pharmaceutical Association, whom I will refer to as APhA, agreed up front that the bill would not involve policy changes beyond those identified in the discussion paper, APhA proposed a number of major policy changes during the development of the bill. These areas were noted, and Alberta Health agreed that the department would work with APhA to review the items they raised but that this bill was only to deal with the limited policy changes agreed to. The APhA agreed to this approach.

Is the current practice of pharmacies that the rent payable cannot be based on a percentage of the revenue obtained from the sale of prescription drugs? The current Pharmaceutical Profession Act does not allow rent payable to be based on a percentage of the revenue obtained from prescription drugs. The Legislature agreed to this provision approximately four years ago. It also agreed that any new leases that were up for renewal within five years of the time the new restriction came into force were to comply with the new law. There is no intent to change this provision from its current restrictions.

Why was the amendment being brought forward in the miscellaneous statutes amendment act regarding the scheduling of drugs and not brought forward in this bill? The Pharmacy and Drug Act will not be in force until the pharmacists have developed the regulations under the Health Professions Act and these regulations are approved. The APhA would like the provisions regarding the scheduling of drugs to come into force as soon as possible. Alberta Justice lawyers looked at the feasibility of adding these provisions to Bill 23, but then we would need to link the current Pharmaceutical Profession Act to the Pharmacy and Drug Act and the Health Professions Act. We were advised that from a legal perspective it is simpler to amend the current legislation. The amendments to the Pharmaceutical Profession Act will come under the Pharmacy and Drug Act regulations when it is proclaimed.

With respect to the comment that it might have been a useful exercise to have taken the opportunity to look at the whole area of alternative medicine, I can tell you that the federal government is in the process of addressing control of natural health products, such as herbal remedies, through federal legislation. Whatever the federal government puts in place for the handling of alternative or natural health products will automatically be adopted in all the provinces.

Can a nonpharmacist be a licensee? No. Section 4(3)(a) states that the applicant for a licence must be a pharmacist.

Does a pharmacist as licensee have the ability to report proprietors through this act? Yes. Section 9(3) gives the licensee the authority to report possible contraventions of law by proprietors to the college.

Why is the definition of professional products department in regulation? There is added comment that this will allow the government to put a definition in place that would allow for-profit facilities. The term "professional products department" is only used once in the Pharmacy and Drug Act. We usually don't define terms up front that only occur once. Instead we provide more information when it occurs. If you look at 32(2)(b), it indicates that the professional products department is the area where schedule 3 drugs are sold to the public.

Why the contradiction between an institutional pharmacy not having to be licensed to provide drugs to patients but they have to be licensed to retail drugs to people who have already been discharged? The licensing of pharmacies relates to selling drugs for money. If institutional pharmacies are going to act as business enterprises, then they will be subject to this act as if they were a regular business. This is the current policy under the Pharmaceutical Profession Act. The thinking behind the policy is that we don't want unfair competition. Public pharmacies can buy in large bulk and receive other advantages by being part of a publicly funded institution. If they were to start retailing as if they were private enterprises not subject to the same restrictions as other retail pharmacies, they would put private pharmacies at a considerable disadvantage.

Now, one member asked: why is the government now putting the professional colleges in the business of registries, adding the comment that this will mean that they have to have a separate employee and separate division to administer the pharmacy registries. This is nothing new. The APhA currently has responsibility for registering both practitioners and facilities. There will not be any need for the college to set up a separate administration for this act. We made sure of that by meshing this act with the Health Professions Act so that the college can continue with a single administrative structure.

There was a comment regarding sections 20, 21, that 90 days is too long for the field officer to make his report. Section 21(1) also contains provisions that the field officer must inform the registrar as soon as possible if there is a problem. The written report can be made later, but problems must be flagged immediately.

Section 33 allows the Minister of Health – I should say that this was a comment – after consultation with the council to make regulations respecting the designation of drugs not covered under federal statutes. There was a question: what expertise does the minister have? Currently, the Lieutenant Governor in Council designates these drugs. The area of new and modified drugs moves very quickly. Therefore, it was agreed that the minister and APhA will work directly with each other to determine the appropriate scheduling of drugs. The APhA expertise is important to the decisions. Therefore, the provision ensures that they will be consulted.

Mr. Chairman, hopefully this information has been useful in terms of response and clarification, and what I'd like to do now is to move House amendments to this bill, which have been distributed by the table. If I could take just a couple of minutes, I'll just briefly describe what those amendments are. These amendments reflect drafting changes rather than policy changes. After the bill was agreed to and tabled, the APhA expressed a preference that some of the wording be changed. We have accommodated the requests. Since that time, the APhA indicated that they are satisfied that suggestions they have made regarding drafts to Bill 23 have been addressed.

We will look at this act again when the APhA has completed all of their work on the Health Professions Act and before proclamation to ensure that the Pharmacy and Drug Act remains in sync. The House amendments address the following areas: the definition of drug is amended to ensure that emergency release drugs and investigational drugs are captured in the definition of drug. The APhA have asked that we clarify that contravention of standards of practice and codes of ethics are cause for misconduct. They also wanted to clarify that the regulations concerning codes and standards talk about how these items are to be developed rather than placing codes and standards in regulations.

11:40

A change is being made to the definition of "sell" to clarify that institutional pharmacies can give drugs to patients. The current drafting already does this; however, the APhA preferred their suggested wording. Provisions are being added which were missed a year ago when the initial splitting of the Pharmaceutical Profession Act took place. This will ensure that the Pharmacy and Drug Act will apply to the same people as the Pharmaceutical Profession Act.

The requirement that the name of all pharmacists employed in the pharmacy be shown on the licence is being removed, and that's consistent with current practices.

The time frame for licensees to tell the registrar when their pharmacy has changed ownership has been specified. Reference to the professional products department – that is, the area where schedule 3 drugs may be sold – has been modified. The act will indicate that this area is immediately adjacent to the prescription area rather than having this indicated in the regulations. Although in making decisions regarding the scheduling of drugs the minister would consult with the APhA, it was agreed that the act would be improved by stating this explicitly.

So I've moved all of them.

THE CHAIRMAN: The amendments will be known as A1, and it's the chair's understanding that we're going to be looking at them in the following manner. If that's not so, then I would like to be told so. They will be looked at in four parts. So the first four – B, C, F, and G – would be voted at one time. Then A1 A would be debated and voted on at a second time. A1 C would be discussed and voted on at a third time, and fourthly, A1 E would be looked at separately. Did I get that sequence right? Sections B, D, F, and G would be together, and A, C, and E would be separate.

MR. MacDONALD: A, C, and E would be separate. That is correct. Yes.

THE CHAIRMAN: Are you ready for the vote on B, D, F, and G?

We're voting on that part of amendment A1 to Bill 23 as proposed by the hon. Member for Banff-Cochrane which includes B, D, F, and G.

[Motion on parts B, D, F, and G of amendment A1 carried]

THE CHAIRMAN: The hon. Deputy Government House Leader.

MR. HAVELOCK: Thank you, Mr. Chairman. I would like to move that we do now adjourn debate and that when we rise and report, we report progress on Bill 23.

THE CHAIRMAN: The hon. Deputy Government House Leader has moved that we adjourn debate on Bill 23 and that when the committee rises, it report progress on same. All those in support of this motion, please say aye.

SOME HON. MEMBERS: Aye.

THE CHAIRMAN: Those opposed, please say no.

SOME HON. MEMBERS: No.

THE CHAIRMAN: Carried.

The hon. Deputy Government House Leader.

MR. HAVELOCK: I move that the committee do now rise and report, Mr. Chairman.

[Motion carried]

[Mr. Clegg in the chair]

THE ACTING SPEAKER: The hon. Member for Highwood.

MR. TANNAS: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration certain bills. The committee reports the following: Bill 34. The committee reports the following with some amendments: Bill 12. The committee reports progress on the following: bills 22 and 23. Mr. Speaker, I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

THE ACTING SPEAKER: All those in favour of the report, please say aye.

SOME HON. MEMBERS: Aye.

THE ACTING SPEAKER: Opposed, if any.

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: Carried.

[At 11:47 p.m. the Assembly adjourned to Tuesday at 1:30 p.m.]