## Legislative Assembly of Alberta

Title: **Monday, May 17, 1999** 8:00 p.m.

Date: 99/05/17

8:00 p.m.

head: Government Bills and Orders
head: Committee of the Whole
[Mr. Tannas in the chair]

THE CHAIRMAN: I'd like to call the Committee of the Whole to order.

### Bill 22
### Health Professions Act

THE CHAIRMAN: The hon. Government House Leader.

MR. HANCOCK: Thank you, Mr. Chairman. I would move that we adjourn debate on Bill 22 and that when we rise, we report progress.

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

HON. MEMBERS: Aye.

THE CHAIRMAN: Those opposed, please say no. Carried.

Before we begin the next item, I wonder if we might have unanimous consent for a brief introduction of guests.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

head: Introduction of Guests

THE CHAIRMAN: The hon. Member for Little Bow.

MR. McFARLAND: Thank you, Mr. Chairman. I appreciate your indulgence early on in the evening. It's with pleasure that I introduce to you and through you to members of the Assembly tonight two diligent government employees who've come to take attendance on the opposition and watch the debate. I would ask that a native of Foremost, Darlene Ylma Reeves, and a resident of Beaumont, Mr. Roger Marvin, who both are working with Agriculture and are probably interested in the bill that's coming up, please rise and receive the warm welcome of the Assembly.

MR. HLADY: To stay on the same theme, Mr. Chairman, I was wondering if I could introduce one more person.

THE CHAIRMAN: For your call. Yup.

MR. HLADY: He looked very lonely up in the members' gallery, and I would just like to ask the honourable Ron Glen to please stand and receive the warm welcome of the Assembly for all his hard work on Bill 31.

Thank you.

### Bill 31
### Agricultural Dispositions Statutes Amendment Act, 1999

THE CHAIRMAN: Are there any comments, questions, or amendments to be offered with this respect to this bill?

The hon. Member for Drayton Valley-Calmar.

MR. THURBER: Thank you, Mr. Chairman. I note that the pages are busy distributing an amendment that I will talk about a little bit later, and I'll just have some very brief comments on this as we go into committee.

It's very difficult, when you get into this whole process of trying to balance all of the users of Crown land, trying to get consensus on how they should be able to use it, because you do have livestock grazing, you have oil and gas, gravel, recreation, et cetera, that everybody wants to use Crown land for. That's been one of the outset goals of this committee and of this government, to try and balance that and make it equitable for everybody who needs to be there, assuming that agriculture, of course, is the first priority in that.

Mr. Chairman, we talked earlier today in question period about removal of a site from an ag disposition without compensation. Certainly the disposition holder should be compensated in some form for impact on his operation, for operational concerns and damages, but not from the Crown. It should be from the other user, whoever that other user might be.

[Mr. Zwozdesky in the chair]

The recreational user in our view should also be responsible for their own actions if they're on property that they neither control nor own. The minister of agriculture has said several times, time and time again in fact, that this bill will not be proclaimed until the regulations are in place. The regulations will be designed through consultation with the various stakeholders who share the privilege of using public land for a multitude of different purposes in this province.

Mr. Chairman, I'm going to keep my comments very brief. I look forward to the debate tonight in Committee of the Whole. With that said, I move this amendment that further clarifies that any reclaimed disposition will definitely be put back into the grazing lease upon being reclaimed.

With that, I look forward to the debate. Thank you.

THE ACTING CHAIRMAN: Thank you.

The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. It's interesting to note the way the movement of this amendment was ended by the sponsoring member saying that this amendment shows that the land, once removed at the end of the use period for the new leaseholder, would be put back into the original grazing lease, yet when you look at the exact wording of it, it says "unless," and unless doesn't mean it will be. There's always a conditional when you have the conjunction "unless" included in an amendment. It says, "unless the Minister considers that it would not be appropriate to return the withdrawn land to the agricultural disposition."

In effect this does not change the meaning or the intent of the bill as it was standing. All it does is make it clear that the minister now has absolute discretion when what we should be doing is saying that if we've taken these lands out of the lease, they should go back into the lease. If the minister wants to have another use for those lands, then they follow the process that's set out in the bill to undertake a subsequent removal of them.

We are in essence in many ways changing the intent and the purpose of the original leases and the relationship that was developed between that leaseholder and the users of that land to effectively give them a degree of certainty that their operation is not going to be disrupted in any way, that their operation is going to be subject to reasonable public debate, public choice. When we look at how lands will be taken out, there's a process to be followed.

Now all of a sudden we're saying that we can take it out, let's just say for a mineral disposition, and when the oil well is dry, the site is reclaimed. Now, instead of saying, "Yes, the leaseholder gets first option on it; they get to have it back, but if they're going to use it for something else, then we have to begin the process of negotiation from the start," we're saying: "Oh, the minister can say, 'Oops; let's just forget about any impact this may have on the leaseholder; let's go ahead and use it for something else'." This is, in essence, probably an indication of intent that is good. It's basically saying that the first expectations are that the leaseholder can have first option, but the minister always has that "unless" clause in there.

I guess in the context of this particular little amendment, Mr. Chairman, and what it does to the bill, I would suggest we support it. But remember, it doesn't improve the bill very much, and it doesn't change the intent or it doesn't address the issue that was raised.

THE ACTING CHAIRMAN: The hon. Member for Drayton Valley-Calmar is rising on a point of order.

**Point of Order**
**Questioning a Member**

MR. THURBER: Just on *Beauchesne* 459 on relevance. I just would ask the hon. member in a very polite way: would you entertain a question on what we've been talking about? Would you?

THE ACTING CHAIRMAN: To the hon. member, if you would just rise for the record and acknowledge that you will accept the question.

DR. NICOL: A question? No problem.

THE ACTING CHAIRMAN: Proceed, then, with the question, please.

**Debate Continued**

MR. THURBER: Did you understand, hon. member, that what I'm doing in this amendment is deleting that part of the act?

DR. NICOL: I heard your comments as including it.

MR. THURBER: No. If you read the amendment, it clearly says that it's deleting that. Okay. Sorry; I just wanted to clarify that.

DR. NICOL: Mr. Chairman, I stand corrected. I apologize to the Legislature. When I was listening, I had heard that he was adding this to the bill. I should have read the piece of paper in front of me. I apologize, and I stand corrected.

Thank you very much. I would hope we would all support this.

THE ACTING CHAIRMAN: Thank you.

Are there any other speakers to amendment A1?

[Motion on amendment A1 carried]

THE ACTING CHAIRMAN: The hon. Member for Highwood.

MR. TANNAS: Thank you, Mr. Chairman. I rise this evening to address a number of questions on Bill 31, the Agricultural Dispositions Statutes Amendment Act, 1999. Since I began my first term as a member of the Legislature over 10 years ago, I don't recall a bill before the House that has tugged me this way and that by constituents expressing their views on both holds of the issue. Friends and longtime acquaintances whom I've known and respected for over 25 years have expressed views at either end of the spectrum and with most points in between on some of the issues here.

My first question, then, is whether or not these provisions of Bill 31 were considered and drafted to fix some irritants in the next few years. Or are they looking at what land would be like in a hundred years? Are we making these provisions on a short-term or very long-term template? What are our goals for the year 2099 for these lands? How does each of these proposed changes in this act affect the long-term viability of the ranches whose role for the past 120 years has been to help supply beef of the highest quality?

***8:10***

I'd like to know if the changes in sections 2 and 3 of the Occupiers' Liability Act and the Petty Trespass Act were inspired by the recommendations, particularly recommendation 7, of the Deloitte Haskins & Sells report on Alberta public grazing rentals. These two changes give rise to the further question: how does the removal of a grazing lease or a grazing permit and the substitution of an agricultural disposition issued under that act in 3(2) change anything? How does it impact the rancher and/or the public? Are there or will there be any provisions to allow the leaseholder to recover damages to property caused by a trespasser?

On a related question under the Occupiers' Liability Act, how does this change help the rancher? Does it increase or decrease his liability? How does it impact the public? Does it change the responsibility of the visitor who has no permission to venture on a grazing lease, and how so? Does it change the responsibility of the visitor hunter or hiker who has permission, and how so? Or in other words, in what way?

The current Occupiers' Liability Act, Mr. Chairman, states in section 5:

> An occupier of premises owes a duty to every visitor on his premises to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there or is permitted by law to be there.

The variations of the duty of care, section 8(1) of the Occupiers' Liability Act:

> (1) The liability of an occupier under this Act may be extended, restricted, modified or excluded by express agreement or express notice but no restriction, modification or exclusion of that liability is effective unless reasonable steps were taken to bring it to the attention of the visitor.
>
> (2) This section does not apply with respect to a visitor who is an entrant as of right.

Section 9 of the Occupiers' Liability Act deals with:

> A warning, without more, shall not be treated as absolving an occupier from discharging the common duty of care to his visitor unless in all the circumstances the warning is enough to enable the visitor to be reasonably safe.

That really can cause a lot of trouble in hunting season. If you give a warning, it has to be more, according to that section, than just a warning.

Finally, in section 12:

> (1) Subject to subsection (2) and to section 13, an occupier does not owe a duty of care to a trespasser on his premises.
>
> (2) An occupier is liable to a trespasser for damages for death of or injury to the trespasser that results from the occupier's wilful or reckless conduct.

How are those helpful?

Does the proposed change in 3(2) to the Petty Trespass Act in section 1(1)(b) change anything other than the term "grazing lease or a grazing permit"? Is it that which is changed to "agricultural

disposition"? Or is it as the Western Stock Growers suggest in a recent article, where they say:

> Changes to Petty Trespass Act:
> No person shall trespass on crown land under a disposition except an agricultural disposition.

So they can trespass there. Here the author notes:

> This effectively means that all dispositions of the crown have the ability to control access, i.e. an oil and gas wellsite, except for agriculture dispositions. Essentially [the author notes] agriculture disposition holders have no ability to protect the property they have leased.

The question is: is this really true? Is this really so?

Under the changes to the Municipal Government Act I want to expressly talk about three: 1(2), 1(3), and 1(4). What do these changes achieve for the lessee? What do they achieve for the public? What do they achieve for the Crown? What is their purpose? Are these changes just wording changes, wording items, where "grazing lease" and "permit" are changed to read "agricultural dispositions"? Or is there more to it than that?

Then with respect to the Public Lands Act amendments I'd like to direct a few more questions through you, with your permission, Mr. Chairman, to the bill's proponent. I'm not certain how these line up in the amendment as noted on page 3, 4(2) which amends section 1, the definition section, as my copy of the Public Lands Act addresses adjoining land, and I'm puzzled by (b) as well, which adds after clause (c) in the Public Lands Act, respecting certificate of title, a new item on conservation, and 4(4) deals with regulations. Well, that's clear enough, and we'll all have to wait for a draft of these regulations to see if the devil truly is in the details.

My question, then, is also related to intention. Do you intend to have the stakeholder input as the regulations, prior to implementation? If so, what is your time line for allowing consultations and agreeable changes to be made to the proposed regulations? Is it a week, a month, six months, a year? What would that be?

The Western Stock Growers Association in its May publication under the heading, Highlights of Bill 31: Changes to Access, noted that regulations need to cover:

- what constitutes reasonable access
- what types of recreation is allowed
- how reasonable access will be obtained
- [some kind of] set up of a dispute resolution process,

an appeal process.

The Western Stock Growers article goes on to quote:

> "A person who enters the land in contravention of the above future regulations may be apprehended without warrant by a peace officer."

But the author notes:

> (There is no mention of a fine to a trespasser however there is a provision for a $1000.00 fine for the grazing disposition holder if reasonable access is not granted.)

If this be the case, then my question would be: to whom is the act referring under the changes of 4(18), page 11 of the bill, in sections 56(1), (2), and (3)? Who is that referring to if it isn't a trespasser?

In the bill, 4(13) on pages 8 and 9 provides for a fine of $5,000 per day under 47.1(1) of the act to replace the current $5,000, which was a straight fee. What set of circumstances would occasion this severe a fine? And similarly a new part of the section provides for a $1,000 fine for failure "to allow reasonable access," and I've referred to that earlier, namely 47.1(1)(b)of the Public Lands Act. This, Mr. Chairman, is a most worrisome provision to all agricultural disposition holders. Are they required to make themselves available 24 hours a day to grant reasonable access to all comers? Will they be compensated for this public duty, similar to a park ranger? Or is this strictly a lose/lose situation for the leaseholder?

Mr. Chairman, I have some questions with regard to section 4(22) and (23) on pages 14 and 15. They appear to be rather draconian measures. In (15) we have:

> (i) in clause (b) by striking out "in the Minister's opinion";
> (ii) in clauses (c) and (e) by striking out ", in the opinion of the Minister,";

and we get into striking out "industrial."

***8:20***

We also have the withdrawal of the agricultural disposition under 4(24) and the following is added:

> Where the Minister issues a disposition for industrial or commercial purposes or for provincial or municipal infrastructure purposes and the disposition is in respect of land that is the subject of an agricultural disposition, the Minister shall withdraw from the land that is the subject of the agricultural disposition the land that is necessary for the disposition for industrial or commercial or provincial or municipal infrastructure purposes.

and

> The Minister may reduce the rent payable under the agricultural disposition by an amount that is in proportion to the area of land withdrawn, and . . . no compensation is payable by the Crown to the holder of the agricultural disposition.

That would presumably be for any of the purposes, whether industrial, petroleum, commercial, or provincial or municipal purposes.

Does this mean, Mr. Chairman, that the government will now be empowered to break a lease contract without compensation whatsoever to the leaseholder and thereby convey the withdrawn portion and the access right-of-way to petroleum, mining, industrial or commercial, or a forest company and scoop up all of the adverse effects and inconvenience payments to the mining or the well site without any compensation to the grazing leaseholder? This has been identified by many people, including, as I said, the Western Stock Growers and the Alberta Grazing Leaseholders Association, as being very offensive provisions.

If the provincial government is not going to provide compensation, should it not require the petroleum or mining companies or the commercial firm or the industrial firm to pay it? Shouldn't this requirement also be part of the amending bill so that the regulations can easily spell out the details for proper and rightful compensation?

Another question, Mr. Chairman. Some petroleum companies currently have 10- to 25-year contracts with leaseholders. Is the government planning to break these contracts also without compensation? Another question comes to mind regarding the withdrawal of land. Will it be returned to the original leaseholder from which it was taken? Well, of course, my question was written before the amendment that we just passed. It's nice to know that these areas won't be put up for sale as private campgrounds or log cabin sites in the wilderness, which would have confronted ranchers with dwellers living in and around and about their lease and with their off-road vehicles and their kids and their dogs and so on. So that certainly is, hon. member, a welcome amendment to the act.

Mr. Chairman, part of the petroleum company compensation money can be a negotiated arrangement for the grazing leaseholder to maintain the necessary fences surrounding the well site. Will it now be expected that the rancher would then continue this obligation and that the Alberta Treasury as the sole beneficiary would then take the compensations that would be by that negotiation forwarded to the leaseholder?

I guess the question needs to be asked, then, if some of the provisions to Bill 31 are designed to employ a large number of civil servants to supervise and carry out the necessary functions hereby mandated. How many people will be required to verify that the municipal district or county tax notices for lease land are absolutely accurate, to collect the taxes from the leaseholder, and then submit

all of the moneys due to the respective municipal governments? As one rancher told me: the MD screwed up my tax bill by nearly a thousand acres. This, Mr. Chairman, is someone who is the third generation on the ranch, and there hasn't been any change in property for a long, long time. It's an easy mistake. A mistake of one digit can easily change the tax allocation on a section of land. There are 640 acres that may be added or subtracted from a ranch.

In a situation where the leaseholder pays, he would have a strong self-interest in appealing the assessment calculations. Would it not be worth considering an amendment to require municipalities to note on all lease land notices sent to leaseholders that the owner is the Crown and to send an extra copy of the notice to Alberta Agriculture and to Alberta Environmental Protection? Why not allow the present arrangement, whereby the leaseholder pays the property taxes directly to the municipality? If the MD's assessment is changed, the leaseholder has a self-interest to appeal that assessment within the 30 days or so that are allowed for appeal. Putting a third party in the picture will not permit time for the leaseholder to appeal the assessment before the legal cutoff date. This proposed change to collecting and rebating property taxes seems to be a bureaucratic process that solves nothing but does provide employment for more staff and in actual fact adds to the tax burden in the Alberta Treasury.

Mr. Chairman, the landowners, the oil industry, and the leaseholders have generally been well served by the Surface Rights Act and the appeal provisions that are provided by that act. Will the new provisions not add another group to the public service ranks? The removal of the Surface Rights Act provisions in order to control adverse effect payments seems to be worthy of reconsideration as to what the bill's goals really are. Having answered that, does this change effectively and efficiently achieve what the goals are?

Now, my time is limited, Mr. Chairman, and I know you'll sigh a sigh of relief. The issues are reasonable access. Who's to manage access? How will the access appeal board deal with the issues? How will unhindered public access to grasslands aid in the important stewardship of the watershed on the eastern slopes of the Rocky Mountains?

The value of a grazing lease is in the right to use the grass in a sustainable way over many seasons, and the native grasslands are truly a world-class heritage. The grass resource was once viewed as of paramount value to the province of Alberta. Is this bill really changing our paramount value to unlimited and reasonable public access, which may imperil the grassland? Alberta's natural grasslands are a very valuable resource, and each amendment must meet the test of the protection of it and the long-term viability of the ranching industry. They must meet that test.

Much of the concern over Bill 31 revolves around what is meant, how does it impact, and what will the regulations provide? I tried in my brief time to address some of the questions asked of me or noted from correspondence sent to me. My constituents who are leaseholders need to be assured that this bill will not be proclaimed – and we're glad to hear that the proponent did say that – and therefore will not come into effect until agreement has been reached on the regulations.

In closing, I wish to thank all constituents who wrote, faxed, e-mailed, came to speak to me, spoke to me on the phone, et cetera, expressing concerns and comments on these matters, and I'd like to acknowledge the material supplied by the Alberta Grazing Leaseholders Association and the Western Stock Growers, Greg Noval and Rick Burton, and other interested parties.

Thank you, Mr. Chairman. I look forward to hearing the answers.

THE ACTING CHAIRMAN: Thank you.

The hon. Member for Drayton Valley-Calmar is just going to answer some of these questions, then I'll address you, Edmonton-Norwood.

MR. THURBER: Thank you, Mr. Chairman. It may even answer some of your questions before you've asked them.

Such a deluge of concerns here. Certainly hon. members have to represent their constituents, and I appreciate their comments when they come forward, although I didn't know you had that many constituents, Don.

Certainly the policy and the regulations that we're in the process of trying to develop here will set the policy, I hope, for the next millennium, because the policies have changed gradually in the last 100 years but not dramatically to meet the times of today. I certainly hope that we'll be able to have a policy that will last for a long time.

We've made a very sincere attempt, Mr. Chairman, in this legislation to decrease the liability of the leaseholder by treating everybody as a trespasser that comes on there for recreational uses. That way, it decreases the liability of the rancher. We believe that that's an additive to the ranchers and a real benefit to them.

Changes to the Municipal Government Act. The only changes there are to allow the province to pay a grant in lieu of the taxes, as we do on all provincial property in this province. On all of the grazing reserves right now we pay a grant in lieu of taxes. This is one of the areas where we didn't do that. The owner of the land should be paying the taxes, and that's the change that we're making in that.

You talked about time lines for consultation. We will be going out very shortly, once this bill is passed, and we'll be talking to all of the stakeholders about: what is reasonable access, and what's unreasonable access? What is the impact on your operation? What's an operational concern? What are the actual damages? The stakeholders themselves will decide what numbers fit in there. So that part is already under way.

***8:30***

The fine for a trespasser. Under I believe 56(1) it can go to a $1,000 fine for a trespasser, and certainly if you can catch him doing any damage, you have the right to collect from him one way or another.

We always get back to the topic of compensation by the Crown. It's not our opinion that the Crown should be compensating anybody. If there's another user there, as I said before, the other user should be paying that compensation. Certainly leaseholders are entitled to some form of compensation, whether it be monetary or factors otherwise considered.

The argument about a large number of civil servants. As I said before, we already pay grants in lieu of taxes somewhere to the tune of $50 million a year. The bureaucracy is there. It's a little more for them to do, but it's only once a year, when the taxes come out. Ranchers will still deal directly with the oil companies and with the other disposition holders that want onto their property on operational concerns, impacts, and damages.

Thank you.

THE ACTING CHAIRMAN: Thank you.

The hon. Member for Edmonton-Norwood.

MS OLSEN: Thank you, Mr. Chairman. I just want to speak to a couple of issues. Actually there were some comments made by the hon. Minister of Justice earlier today in relation to the Personal Property Bill of Rights. I find it very interesting that the Minister of Justice feels confident that his Alberta Personal Property Bill of Rights can apply to a piece of federal legislation, yet he has specifically in this bill excluded any interest in land . . .

THE ACTING CHAIRMAN: I hesitate to interrupt the hon. member, but there were two people standing at the same time. There's only one, so you may proceed.

MS OLSEN: The government has taken on this initiative, and the Personal Property Bill of Rights has a few definitions that I think are important to carry on this debate. One, "'owner' means a person who has legal ownership of personal property."

THE ACTING CHAIRMAN: I beg your indulgence. I believe the Minister of Justice is rising for a reason.

**Point of Order**
**Clarification**

MR. HAVELOCK: Yes, Mr. Chairman. A point of order: 23(h), (i), (j). Actually what I stated in question period today is that one of the things that actually resulted in our bringing forward Bill 13 was the concern by some people that the federal government would have the ability to unilaterally take property, specifically firearms, from rightful owners. I did not at any time today state that the legislation applied to federal jurisdiction, because it doesn't. If the hon. member had been listening carefully during question period, she would understand that.

MS OLSEN: You know what? I'm just not going to challenge the nonsense, so I would like to continue with my debate.

THE ACTING CHAIRMAN: Well, I would ask though, hon. member, that we do try and contain our comments to the bill before us, which is Bill 31. I'm sure you're getting around to tying it in, and I'm looking forward with great anticipation to how you're going to tie this in. Please proceed.

**Debate Continued**

MS OLSEN: I will quote what the Minister of Justice said earlier. He's right. You know what? He didn't say that it applies to federal legislation, but I'm going to quote what the minister said today.

> In part it was in response to the federal government's unilateral decision through its firearms legislation to actually take personal property from individuals without compensation.

So then it leads to the next question. How does this apply? What is the process? We're talking about a federal piece of legislation. We're talking about compensation. We're talking about the Personal Property Bill of Rights here, so I'm confused. I really am. If we do know that our legislation is not binding on the federal government – we know that – then it would be really good for the minister to explain some things. But where it ties into this debate is in relation to the definitions of "owner" and "personal property." Okay? What I'm quoting is from the bill itself:

> "personal property" means only tangible personal property that is capable of being physically touched, seen or moved or that can be physically possessed and does not include . . .

I'm just going to go down to the third point.

> . . . any interest in land.

Well, I find that very interesting, that compensation under this act can occur for a number of things. This is a provincial act, but it specifically excludes land. If I take out this big, huge dictionary here – it weighs a lot, probably five pounds – and look at ownership and look at all the ways to define ownership, we know that ownership can be in the sense of not necessarily having bought and paid for something but can also be getting possession or having or holding as one's own, such as in the grazing lease.

What I find fascinating is the exclusion of such things as the grazing lease, as the contract that applies to this specific issue. You know what? We can have it apply to – and I'm just going to take a guess. I'm going to take a guess that the government – not the minister, because that wouldn't be fair – thinks this is going to apply to federal gun control; right? It can't. So for anybody to think they're going to receive compensation, it would have to be the provincial government saying: we're going to compensate you for having all your guns taken under the federal law. It's very nice of them, but they can't deal with the contracts they have. You see, they exclude out of legislation specifically and purposefully this specific interest. So it can't be a land interest; right? I'm trying to figure out here why this government would be willing to compensate gun owners who have their guns taken under federal law, why they would want to compensate those people, but won't compensate people who lose their land under this specific act.

I think there's some confusion here as to why it's okay for the one thing, because this government hates the federal government because they're Liberals, that they can decide they're going to be the heroes and compensate – it's going to have to be the provincial government compensating Albertans for the loss of a gun – but they can't compensate the ranchers when they are the people that are going to break the contracts of the people who have the leases.

You know, ownership is a critical word, and it applies here. One of the issues I am quite concerned about is that we don't have . . .

THE ACTING CHAIRMAN: I hesitate to interrupt, but I believe the hon. minister of environment is rising on a point of order.

**Point of Order**
**Questioning a Member**

MR. LUND: Under *Beauchesne* 482 I was wondering if the hon. member would entertain a question.

THE ACTING CHAIRMAN: Hon. Member for Edmonton-Norwood, the question to you is very simply: yes or no.

MS OLSEN: That's a big negative, sir.

THE ACTING CHAIRMAN: The question is denied.
Carry on.

MS OLSEN: Thank you. [interjections] No, in fact I'm not chicken. In fact, I have issues of serious debate here, so I want to get on to that.

**Debate Continued**

MS OLSEN: So that's one concern I have, Mr. Chairman. I have 30 minutes here, and I want to get through all of this.

I think the hon. Member for Highwood brought up some of the concerns I had and that I had previously brought up in the House. I still think we're not creating the best piece of legislation. This legislation is not clear. When it comes to ownership, when it comes to trespassing, when it comes to defining all of those issues, we're not clear on how that's all going to work.

We have a number of issues, and the liability issues are of greatest concern to me. I say that because I think it's important. I would like to see Albertans have access to Crown land. On the other hand, if under this act I was a leaseholder, I would be really reticent to allow somebody on the land because of the vagueness of the law that applies in terms of liability. I think that's truly unfair, Mr. Chairman. Albertans should have a right of access to that land, and they do, but under this specific act I can see a leaseholder saying: no, this

is too much of a risk to me, so I'm not going to let you on that specific piece of land.

***8:40***

In fact, there are some interesting places in the province where there's a lot of land held by leaseholders. Let's just say that in the Medicine Hat area we know there's a specific type of hunting that goes on there, that antelope hunting goes on there. Antelope are pretty fast, so if you're going hunting, you might have to go from one rancher's land to the next, and they could be leaseholders. This could cause a problem. So somebody is out on these grazing leases, and they have guns; right? Now, we know that guns are a dangerous thing in this society, and we've witnessed those very events over the last little while. So we have somebody who happens to be out hunting these antelope, that move fast, and they're not quite a good shot. You know, there are some people that just can't hit the broad side of a barn, but they're out there hunting and having a good time anyway. They happen to hit somebody. Let's just say that it's another member of the public who's allowed on that piece of property. They happen to hit somebody with a stray bullet on the land.

Now, we've said that maybe two or three different people can go on these grazing leases. Let's just say that the leaseholder says that's not a high-risk activity and he's going to let two or three different people go out hunting. Okay? So they're going to be out hunting, and somebody gets hit with a bullet. Maybe the person that gets hit with the bullet hasn't asked the leaseholder if he can go on the land. You're going to have a whole bunch of liability issues there. It's going to fall to the leaseholder, and it's going to fall to the guy with the gun. It's going to be very, very cloudy, because you're going to have a trespasser, but you're going to have another guy who's – I can just see nightmares happening. I think that until the liability issue is much clearer and is not so vague, you know, if I were a leaseholder, I would be shrugging my shoulders and saying: boy, do I take this risk?

What about the snowmobilers who want to blast across somebody's land? The hon. Minister of Energy looks like a snowmobiler, but I'll bet he hasn't won a race in a long time though. I would bet that with these snowmobilers crossing the land, if something happens, never mind to a well site that's maybe on the leaseholder's land – I mean, it's so confusing. The liability issue isn't clear. What happens if snowmobiling is deemed to be a high-risk activity after somebody is injured? Until we clear that up, I would be very hesitant, if it were me, to say to the public: "You know what? This is your land, but the liability issues aren't clear, so I'm not going to allow you on the land." On the other hand, why shouldn't Albertans have access to the grazing lease?

So I think in fairness to both the leaseholder and to Albertans who want to use that land, we should make this much clearer. We have failed to do that at this point. I was hoping the Minister of Justice would help with some of the clarity in those definitions, and maybe some consulting with him would be beneficial. I think that's another issue.

We need to determine the guidelines for risky business or risk activity, if you want to put it that way. That's not done yet. I was hoping that the hon. member who was sponsoring the bill, the hon. Member for Drayton Valley-Calmar, would help me out with some of these cloudy issues, and I think it would be really helpful if he did that.

I think those are the bulk of my concerns: the compensation issue, the liability issue. I just find it's very contradictory of this government to on one hand want to compensate people for one thing, but they want to break the contract and not compensate some people for another thing. Well, how can you do that?

DR. WEST: Oh, like the federal Liberals do on the guns.

MS OLSEN: The minister is talking about, you know, federal legislation and the guns. How can Bill 13 possibly apply to federal legislation? You heard the Justice minister. You know what? He surprises me. Every now and then he comes up with the right answer. He was right. You can't. It ain't gonna apply. So if all these guns get taken, my gosh, this government will have to pay. You'll have to pay. Sorry. Through the chair. Maybe that wouldn't stand up to a challenge in court either. So I don't know.

I think the lawmaking has to be clear. I think the government lawmakers haven't quite got it right, and I would sure like to see some more of these issues addressed and see if we can't find the balance in this legislation for Albertans, because I think that's very important. I know that the hon. Minister of Community Development believes in fair law, balanced law, and I know she's a leader. I know she's a leader in this House in fair and balanced law. So I urge her to help us out with this and make this a little more clear. I know that the hon. Minister of Environmental Protection is kind of looking at me like he's scratching his head, but I think he could use one of the lawyers, and they could be helpful to him.

With that, Mr. Chairman, I'm going to take my seat.

THE ACTING CHAIRMAN: Thank you, hon. member.

MRS. McCLELLAN: Mr. Chairman, I have a few questions on the bill, and I'm not going to attempt to answer Edmonton-Norwood.

Mr. Chairman, I've had a number of questions asked of me, and I'd just like the hon. member sponsoring this bill to clarify a couple of things. The bill primarily is enabling, and there is a great deal of interest in the agricultural and I think the energy community as well as to the regulation process in this, because as most of the sections are enabling, the regulations will really dictate how the bill will be carried out. I did notice in reading the bill that it's very clear that this bill comes into force upon proclamation, which I assume means there is a period of time when these regulations will be developed, and I would like the hon. member to give me an idea of what that process will be and who it will include.

[Mr. Tannas in the chair]

I want to offer my support for section 10.01, the area of establishing "support programs and initiatives for the purpose of conservation and resource management." I think that's extremely important. Also in 17(e), the change to "conservation purposes." It was rather narrow I believe in the first instance where it talked only about overgrazing and preventing soil drifting. Of course drainage, too much water, and so on can cause as much a problem to a grazing disposition as those others.

The area of reasonable access. Mr. Chairman, I was introduced to the agricultural community some 37 years ago come June 1. I've gained a fair appreciation for people who come to visit and utilize public land, or private land in my case is more appropriate. I've always found that the use respect policy has been fairly generally accepted, and I can't recall in 37 years on the land ever having a problem with a person occupying the land for recreation, hunting, or any other reason. It is nice, I must say, as an agricultural person to know when somebody is on your land, particularly if they're hunting. The Member for Edmonton-Norwood was talking about stray bullets. Well, frankly, I think most people who go hunting have a sense of responsible use of firearms, but it is a bit unnerving to be out in the field working with bullets kind of careening around.

*8:50*

So the issue of access, I think, needs to be clarified. I would like the hon. member to give us a sense of what reasonable access is. My sense of it is that if a person has 3,000 round bales stacked in an area where they'll be doing their winter feeding and it's tinder dry, you might wish to say, "Please don't enter that lease," because fire can wipe out a year's work.

I don't think it's unreasonable to ask people who are on your land to undertake certain conditions that you put on the use of it. After all, provincial parks are public land, and they are there for the public to utilize. We do have rules and regulations on what you might do when you are on that public land. For example, I believe that you're not allowed to ride a horse in Dinosaur provincial park. Now, one might think, looking at those thousands of acres of grass, that this would be an ideal place to ride a horse, but there's a very good reason for those rules, and I think generally people respect them. I think generally they will respect them on public land that's held by an agricultural disposition if they understand the rules.

The other question I have been asked is on the process for the withdrawal of a lease. Is the leaseholder involved in the discussion before the withdrawal and/or during? The other area around that is: with the withdrawal of the lease, if it's a well, the well site can be fenced, but what about the access road? How do you provide for the inconvenience that that can cause if the well site happens to be sort of two-thirds across the lease? There would be some certain inconvenience if you had a roadway that you had to cross when you're driving cattle or checking cattle.

Those primarily are the questions I have. I think the most significant one is the area around the making of regulations: how that will be accomplished, who will be involved, and what time frame is in there? I think there is some time needed to understand the sections of this act. There has been a fair amount of misunderstanding on some of the sections. I will just point at one: the Crown paying compensation. In my knowledge the Crown has never paid compensation on a oil well on public land. Those are things that need to be explained, I think, a little more fully and probably can occur during the regulation-making process.

With that, Mr. Chairman, I will leave the debate to someone else. Thank you.

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

MR. GIBBONS: Is he answering questions?

THE CHAIRMAN: You'd prefer to wait for one more set of questions?

MR. THURBER: For one more.

THE CHAIRMAN: Okay.

The hon. Member for Edmonton-Manning.

MR. GIBBONS: Mr. Chairman, I stand tonight to speak to Bill 31 in Committee of the Whole. I believe we've been involved in a long process with respect to Crown grazing leases that is approaching what the government hopes to be the conclusion. The main issue that has been an issue for a very long time is around public access to land leased out to a farmer or rancher, in some cases for very many years, and in the case of part of Alberta, it was before Alberta became a province, from the time of federal territorial control. I think that what we tried to portray on how to make this entity a little bit better on access is an indication that would make up the consultative committee for regulations before the bill is passed. This to my perception is what we're doing tonight in committee, and this will give all concerned an idea of how the government plans to stack their deck or how they plan to work with the leaseholders.

As I read through the act, I notice that the sections in the bill may not be clear to the leaseholder holding to a conclusion that it is an uncertainty. For example, the 10-year grandfathering clause may cause problems for people whose mortgage is based in part on the value of the grazing lease. The government will also be able to withdraw land for industrial and commercial purposes after the 10-year period without paying compensation even if the leaseholder has made improvements to the property.

The Western Stock Growers Association sees these actions as a way to ensure a favourable urban outcome in the next provincial election, and something that the Premier has been very concerned about as of late is the urban/rural vote. There's also concern about the rerouting of the municipal tax through the provincial agreement with no right to appeal tax assessment. This also creates more bureaucracy. What did the government hope to accomplish by this? Wouldn't this add to the costs? There is still misperception and confusion around access to the property, and the government needs to clearly inform both the leaseholder and the public of their rights, especially if they expect a contract of access and liability to be signed between the two parties.

As a landowner myself I understand the feeling of ownership and protectiveness of people entering your land. Whether your land is posted against trespassing or hunting, everyone has problems. As I listened to the minister just before us, she says it's not a big problem down there, but as you get closer to more of the urban areas, because it is public land there's a graver concern about that.

What Alberta government committees over the years have wrestled with is that Crown leased land isn't owned by the leaseholder. In many cases these leases, as I mentioned before, have been held in families over generations to the point where the Crown grazing leases have been sold to others over and over again or mortgaged to buy more land, which can be a major concern.

There are concerns on the public sale of public lands. Should public lands that are used primarily for agricultural production be sold or retained under provincial ownership? I can see where the outcome of this is that continued use and conservation of public lands under provincial ownership are supported. There is a public expectation that these lands will continue to be managed by the province. They're also a resource which is an asset to the province, which we're very fortunate to have. We have such a great province, and we have all these assets, but the intentions will be tempered with orderly sales of vacant lands into the Northern Alberta Development Council.

What can be looked at around this is that the public lands based in the white areas should be maintained under provincial control. We seem to be into a lot of these areas where we're wrestling one item against the other, even contract issues under compensation. It's an issue of how we get around the fact of expropriating the land in time.

The next item that's being wrestled with is around leaseholders, and this is the occupiers' liability. With this, Mr. Chairman, there are concerns in ranching communities regarding the liability that they carry when allowing recreational users onto the agricultural disposition they hold. Similarly, numerous recreational users empathized with ranchers and felt that the recreational users should be responsible for their own actions. Who is really responsible to the leaseholder of the damaged land if trespassers do it? In most cases his leased land is so large, who can supervise it? We have hunters in the fall. They're coming on.

*9:00*

Currently the occupier liability – visitors on public land leases are

either invited or trespassers. If an agricultural disposition holder allows someone to access the disposition, the person becomes invited. The agricultural disposition holder accepts the liability on the common duty of care. Many agriculture disposition holders do not realize the liability they assume when allowing people onto their disposition of land. I personally don't agree with the fears put forward by the leaseholders, but I do believe there's a concern there.

Public recreation access should be encouraged with the public recognition that the user is responsible for their actions. Permission and waiver of liability slips could be issued. That's pretty hard to do, but from being a landowner, I think most people respect that, and hopefully that respect will go further, and most people that are going to start using this land will become good Albertans and respect the land that is out there.

The government should review the province's liability legislation with the intention that changes deemed necessary are made through legislation. As part of the expanded use and respect program permission waivers can be sought and simplified so that maybe a few people can actually do something with that.

As I mentioned before, access to land that has been under the management of the ranchers who have presumed ownership must be recognized around the access to public land. This is looked at through surface rights access, and under surface rights traditionally the leaseholder has received compensation for surface rights operations such as the oil and the gas wells on Crown grazing leases. The compensation covers loss of use, adverse effects, nuisance, and inconvenience.

The government proposes to change this by removing the land affected in surface rights provisions from the agriculture disposition. They will then collect the rental payment from the energy companies, although the company will still have to address the leaseholder's operation concerns and pay for damages. The Alberta Grazing Leaseholders Association strongly objects to this plan, and I wonder: have they been listened to? Have they been brought into meetings? Have they been brought to a point that some of their fears for the future of compensation for direct physical damage are up front and that we're not just working on straight regulations for the next 10 years?

These changes could affect the viability of some of the operations where there are long-term mortgages, and they're partly based on the value of the grazing lease and surface rights revenue. When a rancher went in to renew loans this fall, banks indicated the proposed changes would mean that the leased land was no longer accepted as a backing for a loan. It is reported: your lease is worth nothing to me. Well, that's very much of a blow to a leaseholder and a person who's trying to run a business in the agriculture sector. No one should lose their farm because government changes the rules of the game midway. Members of the Alberta Association of Municipal Districts and Counties, the AAMD and C, appeared to support compensation for surface rights access going to the government, but they believe the same rules should apply across the whole province, not just for grazing leases in the white area.

Now, I must agree with the Member for Cypress-Medicine Hat. In a statement on his delivery of this bill in second reading – who is the gatekeeper? I do wonder if the leaseholder, who is the steward of the land, has been fully briefed, and the spin doctoring that actually has happened around most bills that ever come out from the bureaucrats in this government is that Albertans are perceived as greedy individuals. I don't believe so. I just think that maybe it's something that has taken place for an awful long time, and I am concerned very much that legs aren't just knocked out from under them without proper consultation.

I don't think the amendments to the act that – when the lease contract comes to be re-signed, then the new arrangement would be negotiated. Albertans are becoming very leery of the heavy-handed method of the provincial government in their negotiations, under many things. Until a few answers are communicated to this House, I will be personally voting against this bill.

Angry ranchers who stand to lose many millions in yearly compensation from oil companies have accused this government already of making up their minds. If this government does not handle this properly, like many other ministries, for example Health and Education, Albertans will be haunted for years to come. I can see increased tension between ranchers and the energy industry, and I can see energy and the government having high tensions. As we go further down, the leaseholder's and the government's tension is just going to be more and more over the years.

Mr. Chairman, I hope that the members opposite will take notice of their differences now and what differences there will be over the next 10 years when the grandfathering actually comes into place.

At this time, Mr. Chairman, I'll take my leave and sit down. Thank you.

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

MRS. SLOAN: Thank you, Mr. Chairman. I looked forward to the opportunity to debate Bill 31 at this stage, and actually it's sort of refreshing. I think there are some very positive political attributes to this bill, and I have not been on record as saying that very many times in this House. I think we're at a very interesting, quite a unique position this evening, because in fact as a result of this government's initiatives and the report that has been tabled with respect to grazing leases and the recommendations made therein, ranchers in this province now find that they share a common bond with teachers, nurses, physicians, municipalities, AISH recipients even.

What, might you ask, would that common bond be? Well, Mr. Chairman, it is a bond of betrayal and a disrespect for their service in providing a century of stewardship for over 5.2 million acres of the province's grasslands, and the fact that we're at this stage I think is quite unique. We historically had a political culture that has very much divided, particularly under the tenure of this government, the interests of those Albertans living in rural communities from those living in urban communities.

But Bill 31 is a sign, I'm sure much to the government's chagrin, that in fact bonds are being made between those two cultures, and in fact there are a great number of similarities in the tenets of this bill and the tenets of other bills that we have debated in this Legislature this session. While acknowledging that accessibility is something that citizens, the public, have an entitlement to, there also has to be an acknowledgment of a trust that has built up over a century of stewardship, relationships that are built along with that. As a result of those things, Mr. Chairman, I would think that the government would find themselves in a position where they would want to construct a process for the review of grazing leases that would embody that respect and trust and provide for a process in which all parties are duly represented and their interests duly served.

***9:10***

But the reality this evening, Mr. Chairman, is that we do not see a bill before us that accomplishes those things. In fact, it prompts the question which has come to mind many times in a variety of other things, in the debates of other bills, and that is: what exactly does a contract mean to this government? In the case of Bill 31, we're debating leases, contracts, if you will, many of which their expiry is 10 years away. We've heard the justification that legal

counsel has indicated to the government that these things must be undertaken, that the process must be set in motion to address the changes they desire well in advance. But that does not respect the reality that there is a contract, and subsequent to that contract there are many other commitments, responsibilities, obligations, financial and in policy and in organizational senses, that all will be impacted, creating a domino effect, if you will, from this bill's passage.

If you think about it, in 10 years' time, given the legislative schedule of this government, we could in fact have two changes of government before these contracts actually expire, and that is interesting to contemplate. If we want to pass a bill that in effect directly impacts contracts whose expiry is 10 years away, many of us might not be here 10 years from now. So how can we with any assurance say that the regulations that would be passed, the intentions of the members, with all due respect, that have spoken to the bill thus far – how can we say with any assurance that those would be embodied in the discussions, the negotiations, the proceedings 10 years from now? I don't think we can, Mr. Chairman. Ten years is a long time. Many things can change, and in that respect I think that we have before us another example of a process being undertaken under the guise of consultation and under the guise of representing the public and increasing their access to Crown land but really where there's a case of the government having another agenda, that they have not been forthright with ranchers, with citizens, with the electorate.

One of the other main aspects of the bill, just speaking again in general terms, is again this theme that we are governing by regulations, many, many references, really excuses, if you will, that things will be defined in regulations, and that again flies in the face of the trust and the relationships, the stewardship. To say that we don't have the wherewithal to put it on the record, to put it in the bill, to put it in the Legislature so it can be publicly debated at some point in the future, perhaps even 10 years from now – we as government, speaking in the conservative sense, will get around to defining these issues, defining what adverse effect may be in regulations. That, Mr. Chairman, is not good enough, and it does not respect the commitments that have been made by thousands of Albertans to make sure Crown land was safely and respectfully guarded during the tenure of these contracts.

Now, when I look at the brief by the Alberta Grazing Leaseholders Association, I see a number of unaddressed issues. I know that at this stage we haven't entered into the amendment process. I'm looking forward to reviewing the government's amendments and seeing if in fact they address the issues that had not been addressed in the bill in its original form.

Just to highlight some of those specific concerns, Mr. Chairman, for the record, the grazing association identified a number of areas where in fact they acknowledged the issue, the public issue of concern, and provided additional alternatives to the government for consideration. Those included providing a waiver approach to allow grazing leaseholders to continue to promote reasonable access and to protect leaseholders from serious liability exposure. That was made with respect to concerns surrounding public and recreational access to lands.

There were further concerns and recommendations cited surrounding agriculture's relationship to the oil and gas industry and surface rights compensation. Again, we will watch with interest to see if the government's amendments address that particular area.

There were in this submission I believe, Mr. Chairman, a total of eight areas of concerns and recommendations cited, a number of them substantive, and I would hope that at some point in the debate this evening or perhaps tomorrow we will hear the government members go on record with respect to those issues and address them in legislation, not take the cowardly route and leave them to regulations.

Thank you, Mr. Chairman. With those comments I would conclude my debate at this time.

THE CHAIRMAN: The hon. Member for Livingstone-Macleod.

MR. COUTTS: Thank you very much, Mr. Chairman. I'm pleased to join the debate tonight in Committee of the Whole, particularly on Bill 31. I had a number of leaseholders in my area that have brought some concerns through the entire process, from the public consultation right through to today when we see the bill before the House, and I'd just like to bring a couple of those concerns forward.

Many of the concerns that were brought forward by the hon. Member for Highwood and the hon. minister, the Member for Drumheller-Chinook, are concerns that are consistent with what some of my leaseholders are saying. I just want to pick up on a few of the areas that weren't touched on by those two hon. members and something that may be a little bit different tack. Because the southwest corner of the province has such a high degree of hunting population coming there and wanting to hunt on leased land in the fall, there seems to be a big concern on behalf of my leaseholders about the fines for continual denial of access. They're very, very concerned about an opportunity for dispute resolution and whether the leaseholder would be involved in defending his or her position of access or denial of access if they're ever challenged by the person that they deny access to. Leaseholders want to make sure they will be part of the regulations that will put a dispute mechanism in place, and I just want to ask the hon. Member for Drayton Valley-Calmar if that will be something that will be looked at in the regulations.

***9:20***

Another area which leaseholders in my area are very concerned about is the provision of what almost seems like promoting access. Therefore, the concept of access slips was very, very appealing to them, and they would also like to be part of the regulation process that deals with access slips. As I said earlier, particularly when you take a look at the amount of people that come and want to hunt in our area of southwest Alberta in the fall, many leaseholders spend the entire day monitoring access to leases in the fall along with their busy day of working the ranches, et cetera. The reason that they do monitor those areas is because of fear of fire and the protection of their investment in the leases but also protection of the investment they have in their cattle. That's something that's very real to them, and they would like to make sure that they're involved in the process on the regulation.

Tenure is another issue, and I'm pleased to see that good stewardship is still the criterion for re-signing the contract. My leaseholders are pleased with that.

The issue around grants in lieu of taxes. My question to the hon. Member for Drayton Valley-Calmar is: does this create another bureaucracy? Many of my leaseholders have said, "Here we are a government downsizing our bureaucracy, and if the government all of a sudden becomes the tax collector and gives grants back in lieu of taxes to municipalities, is that going to create another bureaucracy?"

I think probably the last couple of things that are important are that we're pleased to see a commitment from the Member for Drayton Valley-Calmar that regulations will be developed with stakeholders. It is important that this be done before proclamation on this bill. That is something that has been really bothering my leaseholders from the standpoint that they were afraid they might not have any input. So I think the question now is: what is the timing,

and what will be the participation by the stakeholders involved? They want to make sure they're going to be involved so that they can have some involvement and some input into the formation of these regulations, particularly on issues such as compensation.

With that and the commitment from the hon. member that these issues will be looked at through regulations, I'm pleased to see that there has been some movement on that.

Thank you very much.

THE CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. It's a real pleasure to stand and speak to the clauses in this bill as we deal with the committee stage on it. There's a lot of issues that get raised in the context of the bill in terms of how the parts of it are put together, how it will be actually applied as it comes out, and what we've got to look at in the context of some of the issues.

As we deal with the major components, if we look at them first from the perspective of what it means in terms of access to the lease by the public, this is something that has really had a lot of public concern and a lot of debate. I think it's right that we as the public and the legislators on behalf of the public look at how we can clarify that debate and make the public feel like this is dual use of public land and also in that same process make the leaseholders feel that they do have the right to undertake their operation; that is, carry it on within the context of that lease without a lot of disruptive threat by the public as they do access.

We have, you know, a public resource here that is similar to any other public good that we in essence allow individuals to have priority use over, and we have to treat these leases in that same context. The method that we've got here is to basically say: we're going to look at a set of regulations that will allow for a clearer definition of what constitutes access. Then we'll have some provisions in this legislation which talk about what happens if those regulations aren't met in the context of penalties.

The bill right now puts in a very severe penalty – you know, it can be debated as to its appropriateness or not – that looks at how the leaseholder can be held accountable for the merits of and the desire for public access by the nonleaseholder to this multiple-use land. What we've got to do is look at how the other side of the equation is also put in place in the context of the balance that exists between the responsibilities of the public to respect the activities allowed by contract to the leaseholder. This is something that we have to look at. You know, if someone walks onto or rides onto or in some other way gets access to one of these leases, there's a lot of things that can or might happen that cause a detrimental effect on the leaseholder in the context of the activities that they are undertaking in terms of raising their cattle.

So what we've got to look at is the kind of balance there, and if we happen to have a situation where the leaseholder is in the vicinity and happens to catch somebody destroying their corrals or burning down their haystacks or doing whatever, they can apprehend that individual or identify the individual so that they can be identified through the due course of law and brought to a situation of accountability.

What we've got to look at is: what happens in the case of a situation where we don't have that direct accountability by identifying the individual who caused the damage? This is where we want to look at whether we as a public have a joint responsibility to those leaseholders to provide them with some assurance that damage caused by our negotiation and debate about the public use and the multiple use can be looked at and dealt with in the framework of how these kinds of situations might arise and the damage that may result from them. So this is kind of where I'd like to start in terms of making some suggested improvements to a bill that can be used to achieve those objectives that we're setting out and that were outlined in the report from the grazing lease review committee.

Mr. Chairman, on that note I would like to take this opportunity to move an amendment to Bill 31. If I understand it correctly, this will be A2. Is that the designation we will be giving to it? What I'd like to do is read this now into the record. If I am not mistaken, I think this has already been placed on the members' desks, so I can proceed without too much delay.

THE CHAIRMAN: Your first amendment has been placed on the desks. The rest are being collated.

DR. NICOL: So they'll be coming shortly then.

This amendment, Mr. Chairman, would read that Bill 31 be amended in section 4(20), in the proposed section 59.1, by adding the following after subsection (4):

> (5) The Minister shall establish policies to compensate the holders of agricultural dispositions for the costs of reclaiming land that is the subject of a disposition where that land has been damaged by the access granted pursuant to this section.

Mr. Chairman, what this is doing is asking that in the context of the development of regulations and development of supporting mechanisms for Bill 31, what we do is look at putting in place a process that will provide assurance to the leaseholder that they can receive compensation if damage is caused to the lease or their property in a way that the productivity of that lease is damaged by the multiple-use component.

***9:30***

Now, Mr. Chairman, this is fairly open in the sense that we want to allow an opportunity for broad consultation on what is a good way to provide funding for this, what is a good way to provide an accountability mechanism for this, what is a good way to provide a reporting or a collection or request for support mechanism. We're not putting a lot of detail into this other than that we're asking that the minister establish this process which includes all those kinds of requirements so that a leaseholder could be compensated if damage is caused to their land.

In the process of the debate earlier this evening, Mr. Chairman, we heard the hon. Member for Drumheller-Chinook talk about what would happen if someone accessed the land and started a fire, burned off the grass. Basically the grazing season for that leaseholder is finished on that portion of the lease, and they have cattle there that have to be fed. Now, that's going to cause them a significant amount of financial burden because of an act that was not theirs. It was not the public's. It was an inadvertent act by some individual who through either permissible access or nonpermissible access caused this damage. I think it is only appropriate in that context that we provide a mechanism whereby the leaseholder on justifiable occasions can have a route to follow in claiming from the public some mechanism for compensation.

Now, Mr. Chairman, we do that in a lot of other areas. We have the Buck for Wildlife program, where a dollar on each of our hunting licences is set aside and creates a fund that is used by livestock operators or other operators to claim damages to their agricultural enterprises when the wildlife that is there does damage to their crop if it's in a swath or to their cattle. So basically we have already made this a part of our public process, our public commitment to multiple use and public interest aspects of either public or private land that's in this province.

So I think it would be really a statement of support and a state-

ment of agreement with the concept that we recognize the merits of multiple use on these public lands and that we should be effectively saying: we know that you are taking a chance by allowing people access to this land which we have given you use entitlement to through our lease, yet we want you to be supportive of the idea that other persons in Alberta may also want to have access to those lands and enjoy them in the public context.

That's kind of where I think this should be going. We should be pushing this to make sure we use this process and this activity that we're creating and this fund, if it be a fund, or some other mechanism to assure the leaseholder that yes, we recognize that when they say they will allow the public on those lands, there is a mechanism there for them, that when unwarranted and negligent damage is a result, they do have a route they can follow to get compensation.

Mr. Chairman, in the framework here we haven't specified a lot of detail, because there's a number of ways this can be done. It can be done like we have the fund for wildlife damage under the Buck for Wildlife program, or what we might want to do is set in place a process where if damage is done this year, over the next X number of years, negotiated with the leaseholder, their lease payment may be reduced to compensate them for the damage that occurred in this year. You know, I think this is something that really is important in the context of trying to make a statement to these leaseholders that, yes, we recognize they are increasing their risk when they agree to do what we're asking them to do, and that is to make these lands more accessible to the public and to broaden the multiple-use aspects of what we have in our public land base in this province.

So on that basis, Mr. Chairman, I would not like to belabour this point, but let's make sure it is understood clearly that we do have to provide this kind of assurance to the leaseholders. This is a way to do it that doesn't constrain the minister to any particular structure. It allows the minister, then, to go out and do some consultation with both those Albertans wishing that public access and the leaseholders to develop a program that is satisfactory, but it does make a good statement. I hope that members of the Legislature on behalf of the public, on behalf of the leaseholders, and on behalf of all of us who believe we should be making a commitment to increase and encourage these leaseholders to allow better public access will support this amendment.

Thank you, Mr. Chairman.

MR. THURBER: Mr. Chairman, I'd just like to enquire: are there other people opposite that want to speak on this particular amendment? Because if there are, I might as well wait until they speak, and then I'll kind of wrap it up, if you like.

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

MR. DICKSON: Sure. I wanted to add a couple of comments. If the sponsor wanted to address it, that may answer some of the questions or concerns I had. So I'd like to invite the sponsor of the bill to respond to what we've just heard from Lethbridge-East.

MR. THURBER: Certainly. I have no problem with that. I was just looking at the time factor and trying to close it up as much as possible, and I may be able to. I think this is a very thoughtful amendment on the basis of the leaseholders. The only thing I will say about it is that I believe it's covered in a couple of areas. If you go back to 10.01, the minister may deal with "conservation and resource management," and he may set up "programs and initiatives . . . to assist in resource protection and enhancement" and that type of thing. I believe it's open enough that it could cover that.

The other thing is that we've projected in this bill that there should be some money going into a so-called conservation fund. We see that as an area that should very much be dealt with on some of these, like the Granum fire that took place a year or so ago. Certainly the ranchers needed some help, and all of the local facilities around there, the firefighters and rescue and everybody else, were in there working to try and help save that. There were a lot of fences, hundreds of miles of fences that were destroyed and acres and acres of grass that were destroyed. I don't know what public lands did in that particular case, but I'm certain that in the regulations we should be able to say, "Yes, your lease payment should be reduced until that grass is back again," a period of one or two or three years, something like that, whatever is needed.

We'll go back to the access question that the hon. Member for Lethbridge-East mentioned. Certainly we've decreased the liability of the ranchers in this legislation to the point that if anybody is on that lease, whether they're invited or whether they're a trespasser, they are treated as if they were a trespasser. You have some ability if you can catch the guy, but then, you know, how do you catch the guy that broke into your house? Certainly you have due process of law in those cases. If you can catch the guy, we've moved the fines from a maximum of $100 to $1,000 for anybody that's in there harming your property plus whatever the judge says would be constituted as fair payment for that.

So I think that covers the main part of it, hon. members. The ability is there, I believe, in the act to do this. Certainly it was a thoughtful amendment, and I thank you for that.

MR. DICKSON: Just a couple of comments. I appreciate the bill sponsor addressing in some detail the amendment put forward, but as I look at page 7 of the bill and the proposed 10.01, "conservation and resources management," I see that it's certainly very broad, Mr. Chairman. But it strikes me that it's focused on sort of panprovincial issues. It's about issues that are not driven by individual claims, by individual damage instances, and it seems to me it is indeed possible that the proposed – there are so many subsections. I've got to look back. I think it's section (8) that would create this new 10.01 that appears on page 7.

***9:40***

It seems to me that the amendment proposed by my colleague from Lethbridge-East doesn't neatly fit under that. You may shoehorn it in and suggest there's authority for it, but I think that what the MLA for Lethbridge-East has done is identify a specific issue, a specific problem and provide the department in this case with actually a very generous degree of flexibility in crafting an appropriate measure. It specifically talks about the cost of reclaiming land. It specifically talks about damage as a result of access granted pursuant to this section. I think that degree of specificity is helpful. I think it helps to define an area of responsibility. I think it helps to underscore the kind of responsibility that is implicit if Bill 31 is passed in its current form.

I hear what the bill's sponsor has said, but I'd have to suggest that the new 10.01 doesn't do what the Member for Lethbridge-East would like to see achieved. He may have some different thoughts on that.

The other point I'd make is this. Part of what we try and do in statutes is – a statute is also an instrument of public education. A statute is also a means of reminding people of what their specific responsibilities are. Somebody looking at 10.01 certainly would not have very much assistance in terms of understanding what kinds of responsibility someone would have by way of compensation to a holder of an agricultural disposition, whereas the amendment clearly does spell out that kind of responsibility.

Having heard the last two speakers, I think on balance I prefer the position of the Member for Lethbridge-East, although I appreciate the explanation. So notwithstanding the comments from the bill's sponsor, my disposition is still to vote in support of the amendment and indeed to encourage other members to vote in support of it.

DR. NICOL: Just a quick question back to the Member for Drayton Valley-Calmar, the sponsor of the bill, in the context of his comments that this is included in that other section of the bill. Can we take that as a commitment on his behalf that he would commit the government to include discussions from interested parties that this could be included under that part of the bill? If he's not willing to give that kind of strong commitment on the basis of his interpretation that it could be used and could be applied and can be achieved in that different section, I would still encourage everyone to vote in favour of this amendment.

Thank you.

MR. THURBER: What I would commit to the hon. member is that certainly in the discussions with the stakeholders very close to the whole subject that will be carried on this summer and fall, this will certainly be on the table for them to discuss and for them to decide. That's one of the reasons we've left the legislation fairly open and enabling: to allow the actual stakeholders to have the final say. I don't think we can predict all the different types of scenarios that are out there from this room. I would commit that that would be part of the discussion.

[Motion on amendment A2 lost]

THE CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Mr. Chairman, if I might just clarify. You're saying that all the rest of the amendments are now distributed, and we can just proceed through them quickly? Okay.

What I would like to do is continue just briefly to address the issue of some of the aspects of access and the resulting potential impact on the leaseholder from different activities. In the proposed amendments, the amendment to section 59.1, we're dealing with some context where the minister can make the regulations. We've talked about that already. At the end they're talking about if a person has made access to a lease and they're either there illegally or are there and creating a nuisance, there are some provisions in there for individuals . . .

THE CHAIRMAN: I'm sorry to interrupt, hon. Member for Lethbridge-East. There seems to be some confusion. You used the term "section 59.1," which refers to the Public Lands Act, but in this bill you are amending 4(20), which then in turn amends. So is that clear to everybody? That's amendment A3.

Proceed, hon. member.

DR. NICOL: Yes, Mr. Chairman. I guess what would be appropriate before I start talking too much about it is that I should read it into the record as well. This is that Bill 31 be amended in section 4(20) in the proposed section 59.1 by adding the following after subsection (4):

> 4.1 A person apprehended under subsection (3) shall have no claim for damages for unlawful confinement or detention.

Mr. Chairman, this deals with the section of the bill that allows someone other than a peace officer to apprehend an individual. It goes on to talk about how this individual shall be delivered to a peace officer as soon as possible, et cetera, making sure that due process is followed and that the individual who does the apprehension doesn't confine the person unduly in getting them to a peace officer. What we're concerned with here is that if someone is vindictive, if I might use that word, and they want to get back at the leaseholder who apprehended them, even though they were there, they could bring a suit against that person other than the peace officer who did apprehend them for unlawful confinement, because they are not effectively a peace officer who is legally legislated to do that. Even if this bill does give that apprehension capability to a person other than a peace officer, the possibility is there that a nuisance suit could result even though it may not go anywhere because of the wording of this legislation.

I think it would again do us good in the context of serving the public and serving the interests of good relationships with the leaseholders to make sure they understand that we would support the idea that if they follow what is normally thought of as due process – and I do not intend this to absolve someone who is in their own sense vindictive or malicious in confinement – this might be something we don't want to see them having to go to court and defend themselves for. So very briefly that's the purpose behind this: to provide safety to that person other than the peace officer who is doing that apprehension so they cannot be kind of put in a position where their own sense of security would be put in jeopardy by this.

So what I'd like to do is have the members of the Legislature look at this, decide that, yes, we need to make a statement out there that if someone other than the peace officer does this apprehension, they don't need to be fearful of being hauled into court and sued for unlawful confinement. You know, they may take the person in and serve them a dinner with all good intentions before driving them to town. If it was a bad dinner, the person might get indigestion and not like it. You know, there are all kinds of ways this can be dealt with, and I think it's a good statement on our part that we say: look, as long as due process is followed and the person who does the apprehension is not malicious, we should probably let this individual know we're going to support them in trying to enforce good public access and good public relations in the context of these leases.

With that, Mr. Chairman, I hope we can see a positive vote on this amendment.

THE CHAIRMAN: The hon. Member for Drayton Valley-Calmar.

***9:50***

MR. THURBER: Thank you, Mr. Chairman. Again a well-intentioned amendment, but I would have to recommend refusal of it to this House. I believe that most of the rules and laws that concern this are under either Justice laws or some federal laws, and I believe you would be protected if you were following due process and weren't going out on a limb doing this to the person. I don't see it happening a lot. If there's a guy out there with a rifle, there are not going to be very many people going out there and trying and make a civilian's arrest at the same time. Sorry; I can't accept this one.

[Motion on amendment A3 lost]

THE CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. The next amendment that I'd like to propose will be designated A4, I assume. This is that Bill 31 be amended in section 4(8) in the proposed section 10.01 by striking out "and" at the end of clause (b), by adding "and" at the end of clause (c), and by adding the following after clause (c):

> (d) to encourage joint studies on conservation and resource management involving

(i) disposition holders,
(ii) representatives of persons who desire access to land that is the subject of such dispositions, and
(iii) groups concerned with the conservation and enhancement of the environment.

Mr. Chairman, this will basically allow us to make sure we get involved in some of the joint activities on behalf of the ranchers and some of the conservation or wildlife groups to get together and deal with educational components or joint conservation activities to make sure that this multiple-use facet of our public lands is promoted as much as we can and that people are informed about it, that people feel that, yes, this is in the best interests of everybody because we understand each other's concerns and we understand how we each affect the others that are involved in this multiple-use land base that we're trying to promote. This would be an easy way to make sure that what we do in the context of this kind of joint activity is done under the aspects of this law that we're passing, this bill, and that it also gets the support of all the different groups that are involved.

Mr. Chairman, I think it's important that we promote this kind of dialogue and joint activity that's involved in making sure that our lands are suited and maintained and promoted, built up in the context of what is good for them in the context of multiple use and the broad-based application for the enjoyment of all Albertans. This is what we're trying to achieve by this bill: to make sure that we reduce the amount of conflict, that we reduce the amount of suspicion, and that we reduce the amount of unnecessary public posturing that's involved in trying to protect each of our own specific aspects of the multiple-use definition of these public lands.

With that in mind, I think by having this part of the mandate, this would in essence encourage this broad-based dialogue between all the interest groups. We would end up then with a more supportive, more congenial attitude and approach among all the users of these public lands, where we want to be able to have rural Alberta welcoming the urban neighbours to use these lands but that they do it in a way that is enjoyable and supportive for all. What this amendment does is make that part of the mandate and part of the activities that are specifically to be carried out and help each of us understand why the other person is doing what their doing or saying what they're saying and promoting what they want to in the context of these public lands.

[Dr. Massey in the chair]

So with that in mind, Mr. Chairman, I would hope that everybody would support this amendment, and if no one else is there, we can now call the question.

MR. THURBER: A quick comment on that. Again, a very good amendment, but in my view it is redundant because of the clauses under 10.01. The minister has made it very clear that he wants people from all aspects of the users on public land to be involved in the making up of the regulations to do this very same thing. So I would just say that it is redundant but will be dealt with in a consultation process.

[Motion on amendment A4 lost]

THE ACTING CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. I'd like to further amend Bill 31 if I might. The aspect I'd like to deal with now is when we're dealing with trying to look at the definition of the mineral use of the disposition or the subdisposition. I'd like to propose that Bill 31 be amended in section 4(24) in the proposed section 79.2 as follows. Part A, the following is added after subsection (1):

(1.1) For the purposes of subsection (1)(b), if the activity under the other disposition pertains to an oil or gas well, such activity will be deemed to have ceased when
(a) the well is no longer capable of commercial production, or
(b) the well has not produced hydrocarbons in commercial quantities for a period of 2 years.

Also, the subsequent amendment B is that subsection (2) is amended by striking out "Subsection (1) does not apply" and substituting "Subsections (1) and (1.1) do not apply". The latter part is just for consistency in the bill.

The reason I wanted to deal with the first part of that in the amendment is that they're talking about when a mineral disposition is not being used, is not being actively promoted, and when it will actually come back into the grazing lease disposition. The bill doesn't adequately define when that would happen. What this amendment will do is basically give the government a chance to say, "Okay, at this point in time that well or that site now has to be reclaimed and put back into the disposition." What it does is in essence prevent the delays that occur when sites are abandoned or are still not legally abandoned, or in title abandoned, but no activity is ongoing on that mineral disposition for a significant period of time. I think it's important that in order to make sure these are put in place, we end up with them in order.

Is there a question?

THE ACTING CHAIRMAN: Is it A5?

DR. NICOL: This is the amendment that Bill 31 be amended in section 4(24) in the proposed section 79.2. This should have been the one with the little number 4 in the corner of the top page, which has now been designated A5.

THE ACTING CHAIRMAN: Thanks.

DR. NICOL: Okay. We have that.

With those comments, Mr. Chairman, and now that we're talking about the same amendment, I would invite reaction from the Member for Drayton Valley-Calmar, or if he doesn't feel that there's a necessity, that he's willing to support this and just let everybody be excited, we'll call for action.

***10:00***

THE ACTING CHAIRMAN: The hon. Member for Drayton Valley-Calmar.

MR. THURBER: Well, thank you, Mr. Chairman, and I wish I could support this one, but there are many other uses on these lands other than oil and gas wells. It could be a gravel pit, it could be peat moss, or it could be a dugout or dirt for a municipality. Generally speaking, the activity is determined by when it's finished operating and it's been reclaimed under the rules of Environmental Protection and the EUB and it's been issued a reclamation certificate. At that point in time then it goes back into the lease, and all of those rules and legal aspects of it are in place right now, so I'm sorry I can't accept this one either.

THE ACTING CHAIRMAN: Further comments? The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. Just in response to the comments. This amendment specifically designates only for those

activities that are oil and gas wells. It doesn't deal with a gravel pit or other mineral dispositions like ammonite or anything else. What it would deal with is just trying to expedite a sense of timing for the closedown and the reclamation of those wells. If the Member for Drayton Valley-Calmar feels that this is strong enough in the environmental protection act, we didn't. We would like a more direct statement associated with this bill, and I would hope that everyone would support it.

THE ACTING CHAIRMAN: Further comments?

[Motion on amendment A5 lost]

THE ACTING CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you again, Mr. Chairman. The next aspect is trying to deal with making sure that all of the individuals involved in aspects of this bill are informed, so I would like to propose that Bill 31 be amended in section 1(4), in the proposed section 416(2.3), by striking out "and" at the end of clause (a) and by adding "and" at the end of clause (b) and by adding the following after clause (b), that being

> (c) where regulations or ministerial orders are made under the Public Lands Act affecting agricultural dispositions within a municipality, the Crown must forward to the municipality a copy of those regulations or ministerial orders.

Mr. Chairman, this is just an amendment which would, in essence, facilitate communication between the affected municipalities and the government to make sure that as changes in the regulations or ministerial orders are put in place – rather than having the municipality constantly having to be looking for the normal recorded way of announcing these, they would be able to expect a proactive activity on behalf of the government for making sure that they're aware of any change that they have to deal with in the context of how they handle their responsibilities, their activities relating to the lease and the resulting appropriate regulation that's being changed.

This is an amendment that would basically not catch the municipalities unawares and would acknowledge that the government should be proactive in making sure that the municipality is aware of any changes that are coming rather than them having to be diligent and vigilant on an ongoing basis. So very briefly I would hope that this would be a positive contribution to the bill and that we could all accept that.

Thank you.

MR. THURBER: Mr. Chairman, I'm starting to feel bad. I can't accept this one from the hon. member either. As it stands right now, the Crown does communicate with the municipalities on any change of use. If the leaseholder changes names or if there's another use coming in, we do communicate with the municipalities at least three times a year – and it may be four times a year – any change in use within their municipality, so they don't have to go looking for it. But thank you for your thoughts.

THE ACTING CHAIRMAN: Are there further comments or questions?

[Motion on amendment A6 lost]

THE ACTING CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. I just skipped to a different part of the bill, again still dealing with the Public Lands Act but a different section. We want to look at how the Public Lands Act defines activities that are normal within the context of agricultural activities. I'd like to propose an amendment, that Bill 31 be amended in section 2(3) by renumbering the proposed section 11.1 as 11.1(1) and by adding the following after subsection (1), that being subsection (2):

> The holder of an agricultural disposition issued under the Public Lands Act shall not be held to have acted with the deliberate intention of doing harm to a trespasser or to have acted with reckless disregard to the presence of such a trespasser by reason of:
> (i) the installation of cattle guards;
> (ii) the installation of electric fences;
> (iii) the installation of barbed wire fences;
> (iv) the excavation of dugouts or other livestock watering facilities on the lands covered by the agricultural disposition.

Basically, Mr. Chairman, what this does is it defines specifically some of the improvements that might be made that would be identified as not being deliberate in their intention to potentially cause damage to an individual who was there with permission or a trespasser. This is important because there's a lot of expectation in the context of the Public Lands Act that as people approach and have access to public lands, they accept a certain degree of responsibility, but also the primary disposition holder, in this case our leaseholders, has a diligence requirement that stipulates that they not do anything that is deliberate in its intention to cause harm.

It's quite possible that interpretations could be made that the way a fence was put up, especially a barbed wire fence, that it could be done in the context of deliberate. We have to be sure that things that are potentially dangerous, like cattle guards, electric fences, barbed wire, are recognized as part of the normal process of operating a grazing lease and that they are not part of what the public can come along and say: gee, this is part of what we might consider to be a diligent or deliberate intention on behalf of that grazing leaseholder.

Mr. Chairman, I just want to relate a little incident. In the development of this amendment we had a number of people who also suggested that we might want to put having livestock on these leases as being something that would normally be excluded here. We got into a debate about whether or not deliberate intention would be putting an overly aggressive animal out there to make sure that it chased all of the trespassers to the closest fence. That is something that is very open to interpretation. Having raised an awful lot of animals in the period of my agricultural activities, I know we've come across some cows or some bulls that have been reasonably aggressive, and I think we have to protect the public from the context that a reasonable amount of diligence should be there that makes sure that the rancher or the leaseholder doesn't deliberately put an overly aggressive animal out there. So I left that part out of this amendment.

***10:10***

What I wanted to do was make sure that we were dealing with issues here that were kind of the infrastructure support, not the temperamental activities, that could be built in to this agricultural disposition. There's always a debate as to whether or not that leaseholder knew of the aggressiveness of the animals that were out there, and animals are part of the disposition just by definition. So what we wanted to do with this amendment was address specifically and only those issues that were part of the infrastructure and the improvements that are associated with the lease, not the animals that were on it.

This basically says that with due diligence and with due process of management we would exempt cattle guards, electric fences, barbed wire, and dugouts or watering facilities from the set of criteria that a trespasser or a visitor may use as a criterion to lodge

a complaint of intent if harmed as a result of their activities on that grazing lease. This in essence would give the leaseholder some degree of confidence that they don't have to be overly diligent and apprehensive about making the improvements that are necessary for good management of their lease.

So with that explanation, brief albeit, I would ask for support for this amendment so that we can have the leaseholders approach the willingness to allow people on there with a little less apprehension.

Thank you, Mr. Chairman.

THE ACTING CHAIRMAN: Thank you.

The hon. Member for Drayton Valley-Calmar.

MR. THURBER: Thank you, Mr. Chairman. The hon. member is absolutely correct in saying that this is very important. I think the definition of these different activities on there would be better left to the consultation process where the stakeholders are involved in it. We tried to move a lot of the liability away from the rancher when we said that anybody that's on that leased land will be treated as a trespasser, and this lowers the liability of the rancher to the point where, unless he sets a bear trap or puts some harrows upside down on the gate or something like that, he's not liable for it.

I do agree with you on the one point, that we're not going to worry about the temperament of these animals because most of the ones that are a little bit aggressive get castrated and sent to town. I also know a rancher that raises fighting bulls for rodeo stock, and they're not very user friendly either, you know, so he doesn't have a lot of problem with trespassers on his with leased land.

I thank you for the thought, but I think that whole discussion should take place during the consultation process. So I would reject this one as well.

THE ACTING CHAIRMAN: Any further comments?

[Motion on amendment A7 lost]

THE ACTING CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. Just a couple of more amendments to give you an idea of how close we're getting to the end of it, three to be exact. What we'll do is designate this one, if we might, as A8. I would propose to move that Bill 31 be amended in section 4(5) first by adding "by renumbering it as section 9(1) and" after "Section 9 is amended"; (b) by adding the following after clause (a):

> (a.i) in clause (a) by adding the following after "in relation to the use of public land":
> "only where consistent with the regulatory and safety scheme for oil and gas exploration administered by the Alberta Energy and Utilities Board";

and (c) by adding the following after subsection (5):

> (5.1) by adding the following after section (1)
> (2) For greater certainty, no regulation made under subsection (1)(a.2) shall have the effect of limiting or restricting the jurisdiction of the Court of Queen's Bench.

Mr. Chairman, this basically is going to make sure that activities of the mineral leaseholders are consistent with the activities that are defined under the Alberta Energy and Utilities Board, that they're following practices that would be acceptable under those guidelines when we evaluate the impact that they may have on the leaseholder adjacent. So this is important, that there is a clear definition of what the criteria are that we're going to be able to allow the agricultural disposition holder to use as the criteria to judge when adjacent activity impact moves over onto their lease and provides them with damages or creates damages to their operation.

We'd also like to make sure that even though the process is followed in the context of looking at the arbitration and the discussion that goes on through Alberta Energy and Utilities Board and this act, if the leaseholder feels it's necessary, we do not by this act restrict their ability to eventually seek compensation through the courts, namely the Court of Queen's Bench for Alberta. So it is important that we basically define a set of standards for the leaseholder to judge the activities of the mineral disposition holder, the potential impact that those activities would have on their operation, and that then we don't limit them only to a tied-up process with a board but allow them to seek final compensation or final adjudication through the Court of Queen's Bench.

So this is just basically making a statement that they do have a lot of options and their criteria are clearly defined. On that basis I would ask the Legislature to provide support to this as well.

THE ACTING CHAIRMAN: The hon. Member for Drayton Valley-Calmar.

MR. THURBER: Thanks, Mr. Chairman. Again – and I hate to be repetitious on this – I believe this is an ideal topic for the consultation process, for the actual stakeholders to decide what should be in there and how they should deal with it. Again I say that I don't think it's our job in this House to try and determine just exactly how they should operate out there. I think that should be an agreement between the ranchers and the oil companies. For them to set up those regulations and those guidelines is I think the appropriate way to go.

So I'm sorry; I would have to reject this one too.

THE ACTING CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. Just to further clarify, did I understand the Member for Drayton Valley-Calmar to say that when the regulatory discussion is ongoing, it will be possible to include in that discussions of final actions in the court, that they will allow the discussions to go that far?

MR. THURBER: Absolutely, hon. member. I believe that everything will be on the table during those discussions with the stakeholders, at one level or another, anything that they want on the table certainly. With your guidance I'm sure this one will show up on the table too.

THE ACTING CHAIRMAN: Further comments or questions on A8?

[Motion on amendment A8 lost]

THE ACTING CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. The next part that I'd like to look at is also in section 4. I guess I should start by saying: is this correctly identified as A9?

THE ACTING CHAIRMAN: Yes.

DR. NICOL: Then I would like to move that Bill 31 be amended in section 4(6), in the proposed section 9.01, first in subsection 1(a) by striking out "or provide for the manner prescribing", in subclause (ii) by striking out "impact or potential impact" and substituting "direct and tangible impact", and by adding the following after subsection (2):

(2.1) The holder of a disposition shall not be bound or affected by a ministerial order made under this section unless the holder has received actual notice of the order.

Mr. Chairman, this again is an amendment that provides the government an opportunity to make a commitment on being proactive in terms of its identification of any changes that are made in these orders that affect the leaseholders.

[Mr. Tannas in the chair]

We all know that in many cases the leaseholders, as most Albertans, do not have it within their daily regime of activities, I would suggest maybe not even their monthly or annual regime of activities, that they would necessarily search out or look for the changes in ministerial order that might directly affect them and their agricultural disposition. This just lets the leaseholders sit with a degree of comfort that if we're changing a regulation or a ministerial order, they will be notified of it before it takes effect so that they in essence have a chance to adjust and respond to it. I think this is only good legislation, good governance.

On that basis I would ask and hope that the members of the Legislature would support us in being a little proactive in communicating to the leaseholders that we're changing the rules of the game.

So with that, I'd ask for support. Thank you.

***10:20***

THE CHAIRMAN: The hon. Member for Drayton Valley-Calmar on amendment A9.

MR. THURBER: Well, I have to say that the hon. member is reaching a little bit on this one. Certainly the ministers do send out notice of any orders that concern a leaseholder. I personally don't see the big difference between "impact or potential impact," in taking that out and putting in "direct and tangible impact."

To take out "or provide for the manner prescribing." The minister may not want to actually prescribe it himself, but it may be a group of stakeholders that he wants to get together to prescribe the compensation or any payments that may be made. So, again, I'm sorry. I'd have to reject that one, hon. member.

[Motion on amendment A9 lost]

THE CHAIRMAN: The hon. Member for Lethbridge-East.

DR. NICOL: Thank you, Mr. Chairman. The next one is also a notice provision that I would like to add. This is basically when the minister changes regulations with respect to public lands. I would like to move an amendment, which I assume will be designated A10. That amendment would be to move that Bill 31 be amended in section 4(11), in the proposed section 19(1.1), by adding the following after "authorization is given": "but only after reasonable notice has been provided to the holder of the disposition".

Mr. Chairman, this would basically make sure that the minister is going to be acting to notify a leaseholder when they give right to occupy or enter public lands under an agricultural disposition. This is important because a lot of the times negotiations can be going on with a secondary user of lands on that agricultural disposition, and the disposition holder may not know within reason when the access is going to be brought about. What we need to do is make sure that a process is in this bill that stipulates that when negotiations are finished between the government and a secondary disposition holder, the leaseholder, the agricultural disposition holder is made aware of any dates so that they can adjust their practice accordingly. Maybe it means just moving the cattle to a different part while some activity goes on. Maybe it means having to make bigger adjustments, or maybe it's just a courtesy.

This is the ability where we want to be sure that we start any secondary activity on one of these agricultural grazing leases without a shock of going out one day and finding a new co-occupant. This is something that we should be dealing with in the context of: look; on this other side we've now finished our negotiations; you can expect them to be undertaking activities. I don't think it would be appropriate for us necessarily to always expect the secondary disposition holder to take that responsibility. I would hope that under courtesy they do, but I think that we as a government and as public legislators and as guardians of the public good should also take the responsibility to make sure that the leaseholder is notified. I think this would be something that would be very easy to accept and put in there and not affect the overall process or direction of the bill but be something that is very courteous in the context of our relationship with the grazing leaseholders.

With that, Mr. Chairman, I would ask for support for this amendment, and I will take my seat.

MR. THURBER: Well, I've never seen so many amendments in my life that made so much common sense but which are already included in law. I would have to say again that this one . . . [interjection] I'd love to, but it's redundant. It's already in there. It's in the lease agreements that the government has with the leaseholders now that they have to give them certain notices, and certainly the minister would not do a lot of this stuff without giving them notice. But thank you for your concerns.

DR. NICOL: I would just in the process like to thank the member for his diligence and patience tonight. I probably, in respect to the last one there, should have spent more time looking at what the actual fine print in the leases might have been, and maybe this last one might not have occurred. But I thank them for their patience.

[Motion on amendment A10 lost]

DR. NICOL: Just a final comment on it, Mr. Chairman. We've looked at a number of the sections of the bill. We've tried to make some changes. I assume now that the process we have to follow is making sure that input is appropriate and guided at the regulatory process. I hope that the process and the direction that we take in building the regulations is consensus building rather than confrontational, and I'm quite sure, knowing the minister and the Member for Drayton Valley-Calmar, that that's the way it will be. It will be a very consensus-building thing so that in the end we have a new bill here that will put in place something that everybody in Alberta can be proud of and that we can really look at our public lands and say that they are our public lands, that we have access to them by the public, and that we also have a very definite set of criteria under which the agricultural disposition holders can operate and expect compensation when damages are in place.

So I think we should all encourage the minister to proceed hastily, and let's make sure that concerns are heard in the regulations.

THE CHAIRMAN: Are you ready for the vote on Bill 31?

The hon. Member for Edmonton-Strathcona.

DR. PANNU: Thank you, Mr. Chairman. Sorry for the delayed response to your invitation for me to stand up and speak.

I want to briefly restate what I said in my comments during the second reading. I think the bill is a good one, and I certainly hope

that it will pass in this session. I have a few amendments which I think will improve some of the minor things that I think need to be done in order to make it even better. I need your direction. I have four amendments here. Should I refer to them as B1, B2?

THE CHAIRMAN: You have four, hon. member. The first one would be A11. The next ones would be A12 and A13 and A14. But you'll have to tell us, when you move it, what sections you're dealing with. Unless you're moving all of them together?

DR. PANNU: I could do them together.

THE CHAIRMAN: Is everyone agreeable to that, that the four amendments would be A11?

DR. PANNU: Yes. That's fine with me. I think I'll just read them onto the record.

THE CHAIRMAN: Any objection?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. That would constitute, then, one vote on the four.

DR. PANNU: That's right. That's fine with me, Mr. Chairman.

THE CHAIRMAN: Okay. If you're in agreement, let's go. On amendment A11, the four amendments there.

DR. PANNU: Mr. Chairman, the amendments that I have deal essentially with the three main issues. One issue has to do with the transition period.

THE CHAIRMAN: Read them and move them all, please.

***10:30***

The first amendment that deals with the transition period is that Bill 31 be amended in section 6(3) in the proposed section 26.1(1) by striking out "a period of 10 years" and substituting "a period of 5 years." That's the first amendment, Mr. Chairman.

The second amendment, related again to the transition period, reads as follows: I move that Bill 31 be amended in section 4(24) in the proposed section 79.2 by striking out "10th anniversary date" and substituting "5th anniversary date" in subsections (1) and (4). These are the two amendments that deal with the transition period.

The other two amendments are as follows: I move that Bill 31 be amended in section 4(8) in the proposed section 10.01 by renumbering section 10.01 as section 10.01(1) and by adding the following after subsection (1):

> (2) The Minister may establish guidelines regarding the funding of the programs and initiatives outlined in subsection (1).

The fourth amendment, Mr. Chairman, that I want to move reads as follows: that Bill 31 be amended in section 4(20) in the proposed section 59.1 by striking out subsections (3) and (4).

So these are the four amendments dealing with three related issues, Mr. Chairman.

The amendment to section 4(8) in the proposed section 10.01, which seeks to add that the minister may establish guidelines regarding the funding of programs and initiatives in subsection (1), simply would strengthen the bill, which already in my view quite articulates the intention of the bill very well. The addition that I'm proposing here would help the minister to fund

> programs and initiatives
> (a) to assist in resource protection enhancement,
> (b) for the purposes of education and research, and
> (c) to assist in the resolution of multiple use concerns.

So this is simply to strengthen further the minister's ability to pursue the introduction and funding of programs that are already mentioned here quite clearly.

The last comment that I want to make, Mr. Chairman, has to do with the accessibility issue, which is covered under section 4(20) in the proposed section 59.1. I want to draw the attention of the House to a copy of a letter that the Member for Drayton Valley-Calmar just shared with me this evening. It's a letter from the Environmental Law Centre which endorses the bill with minor reservation, and that has to do with public accessibility to public lands. My amendment will certainly meet that particular concern that's been expressed by this very reputable agency. So that's the intention of the amendment that I propose to section 4(20) in the proposed section 59.1.

With that, Mr. Chairman, thank you for the opportunity, and I'll sit down.

THE CHAIRMAN: The hon. Member for Drayton Valley-Calmar on amendment A11.

MR. THURBER: Mr. Speaker, just some brief comments. The first two amendments that the hon. member has brought forward are to reduce the grandfathering period from 10 years to five years. I must comment on that, because, whether you like it or not, a lot of these ranchers have incorporated their income from surface revenue into their revenue stream, into their cash flow, and I think a period of 10 years would be the shortest we could go on that to allow them to continue their business.

The one about section 4(8) in section 10.01. The ability is already there for the minister to fund and take the initiative on all kinds of projects under that 10.01: to assist in resource protection and enhancement and the funding of programs for the purposes of education, research, and the resolution of multiple-use concerns. So that one is already there.

The last one, where he mentions taking out subsections (3) and (4). That's the ability for the rancher to have control over who's on his property and, if necessary, arrest and take to the appropriate authorities.

Hon. member, it's well-intentioned. A lot of it's already in there. We can't change the 10 to five, because it would increase the hardship on the ranchers that are depending on that. So I'm sorry; I'd have to reject your amendment. I would recommend rejection.

Thank you.

[Motion on amendment A11 lost]

[The clauses of Bill 31 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 25**
**Insurance Act**

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

MS GRAHAM: Thank you, Mr. Chairman. I'm going to ask the page to distribute the amendments. There are only seven, and they are largely housekeeping amendments. Before addressing those amendments, I do wish to respond to the questions and concerns raised by the members opposite during second reading, being as specific as I can in the responses.

I do think it's accurate to say that the members opposite do support the need for this legislation, and their remarks in second reading, as I interpreted them in any event, were more in the nature of queries and comments. Generally I found them to be supportive. As I mentioned, I will then, after I address those questions, outline the seven amendments, two of which are substantive and five of which are housekeeping. It's my information that the Liberal opposition will support six out of the seven and will be raising a subamendment to one of them.

Firstly, talking about the questions and concerns that were most commonly mentioned by members opposite, the first item I'd like to address is the suggestion that there is a weakness in the act due to the lack of a requirement for continuing education. I'm happy to advise members that this is one of the amendments that I will be introducing tonight as caucus did revisit this issue, and certainly to my satisfaction, a decision was made to mandate continuing education.

***10:40***

The other major area commented upon was the removal of the sole occupation requirement in the current act. It was suggested that this would result in unqualified agents operating in the insurance industry. To this I would say that sole occupation does not ensure that agents are qualified and competent. What is key here is appropriate training, and to this end it is the intention that examinations will be upgraded, and of course the continuing education that I just mentioned will be mandated. As well, I would say this: the requirement that there be a sole occupation requirement I would suggest is anticompetitive, and it's a regulatory barrier that has no clear benefit to the consumer.

There was a query by members opposite as to the status of the Alberta Insurance Council's request for self-regulation, and there was some concern expressed if that were to happen. I can assure members of the House that there has been no decision made to change the status of the Alberta Insurance Council at this time.

The other main area that was commented upon by several members was the suggestion that provincial insurance companies should continue to be incorporated by special act through the Private Bills Committee to ensure that the intentions and objectives of insurance companies are scrutinized by the Legislature. I would say, number one, that the current process is archaic. We are one of the last jurisdictions in North America utilizing this procedure. It is cumbersome and time-consuming for the insurance companies trying to get incorporated, and it does cause a lot of missed business opportunities. I would also say that the current process does not catch most insurance companies that operate in the province, because it doesn't apply to federal insurance companies or extraprovincial insurers. Therefore, it's not really all that effective.

I would also advise members that the new process that is being proposed, whereby the Lieutenant Governor in Council would issue a certificate of incorporation to a new insurance company, is going to be much more comprehensive than the process that was used in Private Bills by virtue of the factors which must be considered by cabinet before granting the certificate of incorporation.

Now, as quickly as I can, I would just like to address the specific issues raised by the members opposite that were individual to each one of them. The hon. Member for Edmonton-Gold Bar argued that the amount of an agent's compensation should not be disclosed. I respond to that by saying that the bill is clear in section 511(1)(f) that the amount of compensation paid to an agent will not have to be disclosed, just the fact that the agent is receiving compensation for selling insurance.

The hon. Member for Edmonton-Manning raised this query. He wondered if section 452 of the bill restricts the insurance activities of banks. To this I would say that the insurance powers of banks are restricted by the Bank Act and not the Insurance Act.

Calgary-Buffalo wondered whether the new act would address what he called the public adjuster issue. I can advise that the bill clarifies that an adjuster can only represent clients respecting losses under contracts of insurance.

He also wondered why section 48, which does deal with situations where an insurer is not keeping appropriate records, should not be an offence. I would say to him that if he had a look at section 44, this deals with the records insurers must keep, and it is in fact the offence section. Section 48 is related, and it does permit the minister to have records prepared at the insurer's expense. The two are related, but there is an offence there contained in section 44.

The hon. Member for Calgary-Buffalo felt that section 309(2)(b) was vague and that it should define conflicts for directors. I would just say this to that hon. member: it's difficult to define all possible conflicts, so directors do have to look at their own circumstances and set appropriate standards based thereon. He also felt that the regulation-making powers in the act were too broad and too many, and this was mentioned by a couple of other hon. members. I would say to that that there is a need to have flexibility to deal with the various marketplace changes with the regulation-making authority. This is a very large act, and to try and include all of the detail in the act is just not realistic.

The Member for Edmonton-Riverview outlined a couple of industry studies that she had had reference to and argued that the bill did not address consumer issues such as consumer education, openness and disclosure, service, choice, fair practices, and general redress. This is a big act. I don't know whether the hon. member has had an opportunity to read it in full, but I can say that there are certainly consumer protection measures in the act, and they have been upgraded from the existing act. There are prohibitions against tide selling, against coercive, unfair and deceptive practices. The penalties that can be imposed for infractions under the act have been increased not only in the amount of the penalties, which have gone from a maximum of $200 to a maximum of $200,000, but there are also interim measures that the minister can use short of courtroom prosecutions. There are also more disclosure requirements on behalf of agents and insurance companies. There's the ability to prescribe claims settlement practices for insurers and adjusters to benefit customers, and there is also major consumer redress through mandated errors and omissions insurance and the new fraud fund which is proposed.

The hon. Member for Edmonton-Centre argued that the term "broker" should be restricted to only property and casualty agents. The reality is that there are life insurance agents who, like general insurance agents, do operate independently and refer to themselves as brokers, and that should continue. She also argued that allowing banks to get a licence means that banks will have more access to personal information. Banks are already selling insurance in a limited way, so licensing them – certainly it does not follow that

they'll have more access to personal information. In any event there are regulations proposed that would deal with privacy and which would limit the use of personal information by banks.

The hon. Member for Edmonton-Norwood argued that financial institution employees should have to be licensed. In the bill for the first time financial institutions will be required to have a corporate licence, but the hon. member felt that the individual employees of banks and other deposit-taking institutions should have to be licensed. I would say to that that given the very limited scope of activity of the employees of banks and other deposit-taking institutions, really the corporate licensing is more effective than the individual licensing and certainly addresses all of the necessary concerns.

***10:50***

She also argued that there was no authority in the act to suspend or revoke a licence for not complying with licence conditions. In fact, section 480(1)(b) of the new act does provide that ability. She also argued that compensation sharing, which will now be allowed in that prohibition, is being withdrawn from the act, will have the result of unlicensed agents selling insurance. My response to that would be that section 499(1) states that an insurer or an agent cannot pay compensation to an unlicenced person who acts as an agent or, in other words, solicits insurance. That would be an illegal activity.

She also argued that rebating will result in insurers not maintaining adequate reserves. My answer to that is that insurers' reserves under the act must be certified by an actuary, and additionally there are other onerous solvency rules that should prevent the concern raised by the member. She also felt that the act should have defined unfair and deceptive practices. The reason a specific definition was not given is that it would limit what is unfair or deceptive, and that really is a question of fact in each and every case. She pointed out that in her opinion licensing of staff adjusters is redundant. Licensing of staff adjusters will happen now for the first time. To this I would say that staff adjusters are not currently regulated, so it's not a redundant activity.

She also thought that the scope of an actuary's work under the act was not defined and should have been. The answer to this, Mr. Chairman, is that the Canadian Institute of Actuaries has standards of practice, and the actuary's work must be in accordance with that.

The Member for Edmonton-Meadowlark itemized five areas that she felt were not addressed in the act, that being the claims process, policy renewals, limitation of claims, privacy, and dispute resolution. In fact, under the new act there is the ability to prescribe claims settlement practices and underwriting or renewal practices, and there are privacy rules in section 511. The two other items that she mentioned, being limitation of claims and dispute resolutions: the intention is to deal with these in stage 2 of the rewrite.

Lastly, she argued that credit unions and the Treasury Branch could be given insurance powers. They are given their powers in their respective acts and not the Insurance Act.

I think I will now quickly go to the proposed amendments. As I mentioned, Mr. Chairman, there are seven amendments. Clauses A, C, and E correct section cross-references in the act and are very basic housekeeping-type amendments. Clause B implements a caucus decision to add a section that was inadvertently left out of the existing Insurance Act. That amends existing section 16 by adding a clause (d) and a clause (e) after clause (c). It allows by regulation the exemption from the application of the Insurance Act either

(i) a specific contract of insurance,

(ii) any type of contract of insurance that indemnifies the person who has an interest in a product against the product's malfunction, failure or breakdown.

Here we're talking about appliance warranties. The Insurance Act scheme is not applicable because of the removal of those types of things from the Insurance Act. Lastly,

(iii) contracts of insurance issued by a specific person or class of persons who operate on a non-profit basis.

There is one group that has been exempted at the present time.

Clause D implements the caucus decision to add the requirement of continuing education for insurance agents and brokers through regulation.

Clause F is also new, and it clarifies that the address of reciprocal insurance exchanges' principal attorney and the address of all insurance agents and adjusters whose information must be kept by the minister as part of the insurance register will in fact be the business address as opposed to any other address for those parties.

That completes my description of the amendments. I would like to move amendment A1, and I will now sit down.

THE CHAIRMAN: The hon. Member for Calgary-Buffalo for amendment A1.

MR. DICKSON: Thank you very much, Mr. Chairman. I appreciated the explanation and in fact the very detailed response provided by the Member for Calgary-Lougheed to those questions that were raised in an earlier stage of the bill. I appreciated very much that courtesy.

I make this observation in speaking to the amendment, and this is a general observation: you know, we look at a bill that's 418 pages long, and we spent only 2.8 hours debating it. I think members of the opposition are faced with this challenge. We understand that there has been massive industry consultation. We know the hon. Member for Calgary-Lougheed has strived mightily to ensure that there's been a lot of stakeholder feedback. The opposition starts much further back, because our consultation without the benefit of the bill in advance tends to be more limited. But we think and the advice I certainly have from my colleague for Edmonton-Gold Bar is that the amendment for the most part, particularly sections A, C, and D, seems to be in order. The concern, I think, was expressed directly to the hon. Member for Calgary-Lougheed that section 1 definitions refer to the "Government approved industry plan" under section 661 and the "insurance council" under section 484. But for the most part those amendments seem satisfactory.

I do wish to move a subamendment, Mr. Chairman, and that has been distributed as I understand it. The subamendment that I move on behalf of and in the name of my colleague for Edmonton-Gold Bar is that amendment A1 to Bill 25 be amended in section B(d) by striking out subclause (i). That's the subamendment I'm moving, and I take it that that would be amendment A2?

THE CHAIRMAN: That would be SA1.

MR. DICKSON: Of course. Amendment SA1. Thanks very much to the Clerk and the chair.

The reason and the effect of this subamendment is really very straightforward. The concern is that now you can have exempted from the application of the act a specific contract of insurance, and the concern is that this is too broad. We understand that this is a power that's not used widely in any event; it's been used relatively sparingly in the past. While we may have confidence in Mr. Rodrigues, the current superintendent of insurance, and the people involved in it, we think this may be a problematic provision, so our subamendment is to eliminate the specific reference to a specific contract of insurance. It leaves the other elements intact. We think, Mr. Chairman, it ensures that we're simply addressing real issues and real problems and to some reasonable extent limiting the powers

under the act. So I encourage members to look very carefully at the subamendment and support the subamendment.

Thank you very much, Mr. Chairman.

***11:00***

THE CHAIRMAN: The hon. Member for Calgary-Lougheed on the subamendment.

MS GRAHAM: Yes. Thank you, Mr. Chairman. I would just say this in response to the proposed subamendment. In the existing Insurance Act the section as proposed exists, and for that reason I would suggest that it should remain. It is currently in the Insurance Act. It was included in the Insurance Act as a result of an amendment in 1997, so it would have had scrutiny at that time before it was included in the act.

I would agree that this section has been drafted fairly broadly, but there is a reason for that. That is to allow a regulation to be brought forward should a type of contractive insurance come along, which it does from time to time. It technically qualifies as insurance but does not justify the application of the entire regulatory regime of the Insurance Act. There is nothing that is exempted by this particular section at this time, but that's not to say that in the future there wouldn't be something exempted by this provision.

So for those reasons I would urge members to defeat this subamendment and support amendment A1 as it reads.

[Motion on subamendment SA1 lost]

[Motion on amendment A1 carried]

[The clauses of Bill 25 as amended 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 22**
**Health Professions Act**
*(continued)*

THE CHAIRMAN: Are there any comments, questions, or amendments to be proposed concerning this act?

The hon. Member for Edmonton-Strathcona.

DR. PANNU: Thank you, Mr. Chairman. Bill 22 obviously is a large document. It's close to 280, 285 pages. I would like to propose an amendment to a section under schedule 21 which deals with health professions, the professions of physicians, surgeons, osteopaths, and podiatrists. The section that my amendment deals with – and I want to read this amendment to you. I will be moving this amendment on behalf of my colleague.

THE CHAIRMAN: Hon. member, we don't appear to have that amendment at hand. Do you have copies of that amendment? [interjection] Ah, that would be good.

DR. PANNU: Mr. Chairman, while the amendment is being distributed, let me talk briefly about the main concern that I have. The concern arises from the sections of the bill which deal with the powers of the council of the College of Physicians and Surgeons. The amendment deals with a particular section that refers to the powers of the council dealing with medical facilities other than hospitals.

The amendment, Mr. Chairman, that I would like to move on behalf of my colleague from Edmonton-Highlands is as follows: that Bill 22 be amended in schedule 21 in section 8(2)(b) by adding "provided such diagnostic or treatment services do not require overnight stays for patients." This is to be inserted after "the Hospitals Act" in that document. I think the page in question is page 232 of this act.

What this amendment proposes to do is to make sure that the provisions of this bill do not allow the College of Physicians and Surgeons to approve hospital facilities through the back door. It's really an attempt to ensure that the College of Physicians and Surgeons, which is currently developing accreditation standards for private, for-profit hospitals, is disallowed by this amendment to let private, for-profit hospitals be established in this province.

The Premier the other day, I think, was musing about accepting the New Democrat suggestion to ban private, for-profit hospitals in this province. That's sort of closing the front door, but if this bill is not amended, then I fear that the back door will remain open, through which the council representing the College of Physicians and Surgeons could approve such facilities, which the review report on Bill 37 very clearly described as essentially hospitals. The facilities are hospitals by another name, in other words. So the college certainly is saying that it's dealing with long-stay nonhospital surgical facilities, but these are really hospitals.

The purpose of this amendment is to add a statement at the end of the particular section that I just mentioned which would say, "provided such diagnostic or treatment services do not require overnight stays for patients," after "the Hospitals Act." I think we have no reason to allow the College of Physicians and Surgeons to have the power to establish what would essentially be hospitals when in fact we do have a Hospitals Act in this province which can appropriately be used, and the government can be guided by the Hospitals Act in the establishment of new hospitals, hopefully public and nonprofit.

So that's essentially the thrust of the amendment, and I urge all members to support the amendment. Thank you, Mr. Chairman.

THE CHAIRMAN: For the record, this is amendment A3.

The hon. Member for Medicine Hat.

***11:10***

MR. RENNER: Bill 22 is essentially a bill that is designed to deal with the regulation of health professions. The College of Physicians and Surgeons is somewhat unique in that they have responsibility under existing legislation for not only regulating the members of the profession, but they also have responsibility, like the college of pharmacists, to regulate and accredit facilities. The bill reflects status quo with respect to facilities.

This amendment is really a fairly substantive policy decision that I think is best left for debate on another day. We have had much discussion in this House related to the accreditation of facilities, and I'm sure we will have more discussion in the days to come. But I don't think it's in the best interests of making good decisions to try and deal with this substantive issue in relation to the other very substantive issue which is the gist of Bill 22, and that is the change in the way we'll be dealing with the regulation of health professionals. So I would recommend that this amendment not be supported.

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

MS LEIBOVICI: Thank you. I would like to speak to this amendment as well. Though I recognize what the Member for Medicine

Hat is indicating, that this is a substantive amendment, the reality is that under this particular act all of the various schedules with regards to the different colleges are open for discussion. Given the amount of interest that has been generated around the whole issue of private, for-profit hospitals, this amendment as well as an amendment that the Official Opposition will be putting forward are amendments that I think are worthy of being considered by the government and not just cast aside as an amendment that cannot be discussed because it is too substantive, given the nature and the intent of Bill 22, the Health Professions Act.

One would have thought it would have been a good opportunity for the Minister of Health as well as for the Premier to in fact close any loopholes that exist with regards to the College of Physicians and Surgeons embarking on a policy-making decision even though that is not their role. I remember being at the meeting in December that the College of Physicians and Surgeons had with regards to looking at overnight nonhospital surgical facilities and the standards and the discussions around that particular issue. It was very clear that because of the potential for the college being sued as a result of the way its legislation is currently set up, in fact that potential should have been addressed within the confines of this act and could have been quite easily.

As a matter of fact, at a meeting that both the New Democrat opposition as well as the Official Opposition attended in Calgary on Thursday, we both indicated that if the government were willing to bring in an amendment to ban private, for-profit hospitals, there in fact would be unanimous consent, and we could probably do three readings within one day if need be. That's how much we have taken to heart – the Official Opposition has – the need for there to be clear policy direction and clear legislation with regards to banning private, for-profit hospitals in this province.

The amendment that the New Democrats make is an amendment that could close one such loophole. The amendment that we will make, I believe, shuts the door forever on private, for-profit hospitals within this province.

[Mrs. Gordon in the chair]

As I indicated, I believe that the government should very strongly look at both of these amendments, either separately or in conjunction, and might do very well by passing these amendments and ensuring that the College of Physicians and Surgeons can once again perform the function they were meant to perform, and that is to look at standards for clinics and not look at standards for hospitals, be they private hospitals, be they nonregional hospitals, or be they approved hospitals under the Hospitals Act. It's very important, given the time span that the College of Physicians and Surgeons is looking at with regards to potentially implementing the standards for private hospitals within this province, that this be examined as quickly as possible.

Thank you.

[Motion on amendment A3 lost]

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

MR. DICKSON: Madam Chairman, just as a matter of process to expedite what may follow this evening I wanted to ask for unanimous consent to abridge the 10-minute period for ringing of division bells prescribed by Standing Order 32(2), to reduce that from 10 minutes to one minute.

[Motion carried]

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

MS LEIBOVICI: Thank you, Madam Chairman. It is my duty tonight to bring forward some amendments that have been looked at by the Official Opposition in conjunction with some of the groups across the province that are concerned about some of the provisions within Bill 22, the Health Professions Act. We are thereby proposing a number of amendments that will deal with some of these issues and hopefully will highlight, as I indicated, some of the concerns that some of the professional groups have with regards to the act.

As I indicated at the outset of my comments in second reading, this act is a huge undertaking. It's one where I guess quite honestly the proof will be in the pudding with regards to how it is implemented and how each of the individual colleges looks at implementing their particular regulations, bylaws, and codes of ethics and in fact whether the full intent of this legislation will be realized over the next couple of years. The steady hand of the Member for Medicine Hat, I believe, has managed to deal with some of the concerns that we have seen even in this short period of time while the piece of legislation has been in the Legislative Assembly. It is, however, my concern that should another MLA without the kind of background that the Member for Medicine Hat has be engaged in seeing the enactment of the act, we may well see the actual intent of the act not be brought forward. So it is with caution that I approach this particular piece of legislation, and it is in that theme that I put forward the amendments with regards to Bill 22.

***11:20***

My first amendment – and everyone should have a copy of all the amendments, and I will be moving them individually – is that Bill 22 be amended in schedule 22, which is the schedule dealing with the profession of psychologists, in section 9(2) by striking out "Psychology Act" and substituting "Psychology Profession Act". This, Madam Chairman, is merely a correction. It's an oversight in the legislation, and it would make the act consistent with other provisions. Hopefully this amendment will be acceptable to the government.

Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Well, thank you, Madam Chairman. We're getting off to a good start. This is a logical amendment that in fact corrects a typographical error, and I would encourage all members to support it.

[Motion on amendment A4 carried]

MS LEIBOVICI: Good start. It would be nice if we could continue.

The second amendment also deals with schedule 22. The amendment reads: be amended in schedule 22 in section 2 by striking out clauses (b) and (d). If you notice on page 247, again under the profession of psychologists, what (b) and (d) refer to are the psychologist assistant and the associate psychologist. What the amendment basically requests is that those two categories be deleted, and I'd like to provide the reasons for deleting the category of associate psychologist so that the Assembly has a good understanding of the intent there.

The development of this category should be opposed for three principle reasons. The title extends the term psychologist to

individuals who have not met all the requirements of licensing in the province. As such, it is a misleading label. Other provinces have categories referred to as psychological associate or psychological assistant, terms that would more accurately reflect the status of these individuals. Fundamentally, the title psychologist should be reserved for individuals who have met all of the requirements for licensing.

Under the provisions of the proposed act individuals who are in the process of licensing can practise the profession under supervision. How, however, is the profession to respond to an associate psychologist who repeatedly fails licensing requirements and might perhaps take several years to complete the task of licensing or perhaps is reluctant or hostile to licensing at all? At what point is supervision going to be less frequent or only a shadow exercise? How many associate psychologists will it take to form a sufficient lobby group to argue that certain licensing requirements may even need to be abolished to simply allow them to practise without supervision? This is a very slippery slope.

The third reason to vote for this particular amendment is that most Canadian psychological associations believe that psychology will eventually have sufficient training opportunities for the profession to move to a doctoral standard for entry into the profession. In fact the Canadian Psychological Association has been on record for some time as recommending the doctoral standard of training in Canada. Therefore there's the concern that creating a category of associate psychologist may create long-term problems in that transition. As such, it would provide for unfortunate confusion to the public and the profession and should therefore be anticipated and stopped before it becomes a reality.

Now, the idea of mandatory registration runs throughout the act, and individuals who can be licenced should apply under that procedure and provisions of the act for licensing as a psychologist, and they could therefore be placed on the temporary register of psychologists while completing the requirements. In fact perhaps the title provisional psychologist might be a title that the government would wish to look at. Therefore, the proposed title of associate psychologist is one that is not acceptable.

This is from a submission that was put forward by the Psychologists Association and therefore I believe has validity in terms of their concerns with regards to this particular title. So again I would request that consideration be given to this particular amendment, and hopefully we can follow the good example that was set with regards to the first amendment.

Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. Unfortunately I can't support this amendment.

I'd like to refer the hon. member to page 80 of the act, section 127(5), which deals with protected titles. There's a number of areas where the act has protected titles. The purpose of this section is really twofold. One is to establish areas where a college may make regulations, but probably more importantly it is to establish a series of protected titles. One of the problems that the public has had in the past is being unable to distinguish between practitioners who are in fact regulated and others who are unregulated.

What has happened in the past is that associations or colleges have attempted to discipline members who have been practicing in circumspect ways. There was a very widely publicized case awhile ago where a practitioner was found guilty of inappropriate sexual contact with patients and was drummed out of the professional body and simply changed his title to something similar and carried on business as usual. So the purpose of listing a number of different titles here is not necessarily because the college wishes to make the regulations and incorporate those various titles, but more importantly it protects those titles and prevents individuals from using those titles and confusing the public.

I would recommend that members do not support this amendment.

[Motion on amendment A5 lost]

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

MS LEIBOVICI: Thank you, Madam Chairman. My next amendment and the one following it as well deal with the definition of psychotherapy and communicating the diagnosis, the restricted activity. You will see that there's a common thread through the majority of amendments that are going to be proposed, the next, I'd say, seven or eight amendments, in that they deal with the psychologists schedule and also with some general concerns that are in the main part of the bill that are more general concerns, but the examples I will give are concerns relative to psychologists at this point in time.

***11:30***

The third amendment I will be moving is that Bill 22 be amended in schedule 22 in section 3 by striking out clause (a) and substituting the following:

> (a) treat illness or dysfunction by psychological methods involving the establishment of a professional relationship with a patient and the utilization of methods that extend beyond the provision of assistance in coping or giving advice and support, and

then that particular article would continue,

> (b) provide restricted activities authorized by the regulations.

The reason for this particular amendment is that there is an understanding that the definition of psychotherapy should be revised to be more consistent with the work of a subgroup that met on an ongoing basis, it's my understanding, on restricted activities and also, in particular, more consistent with the actual practice of psychotherapy. What we see – and in fact there was an understanding – is that psychotherapy if performed by untrained persons or in an incompetent manner can be dangerous, and therefore it had to meet the criteria for a restricted activity.

The Psychologists Association in conjunction with the College of Alberta Psychologists had done a fair amount of work around implementation of this particular concept. They felt disappointed in that their particular language was not accepted and that the language within the schedule seems to deal more with an activity, a function, and that in fact that language may well have been borrowed from the Mental Health Act and should not therefore apply to this particular legislation. The other concern around this particular amendment is that the language that had been initially discussed in the subgroup on restricted activities was not present in the bill as we see it now.

The issue is one of: how does a group of professionals look at defining the work they do? That group of professionals had seemed to put forward some wording that was acceptable to that group with regards to the restricted activity and the definition for psychotherapy, but that in fact was not what appeared within the legislation itself.

Therefore, this is an amendment that would seem to address some of those needs. It would be interesting to hear what the government has to say with regard to this particular amendment and the definition, and hopefully it will be to accept this amendment as it now stands.

Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. Section 3 in the schedule is designed to provide for a general scope of practice statement, and to accept this amendment would be to severely restrict the scope of practice for psychologists because the scope of practice as stated in Bill 22 says to "assess, diagnose and treat mental, emotional, cognitive, behavioural and interpersonal difficulties," and it goes on.

This amendment, should it be accepted, would really restrict the scope of practice only to the treatment, because this deals specifically with treating illness and talks about psychosocial intervention. It would be inappropriate to amend the act where it's suggested here.

When I first read this amendment, I assumed this would be aimed at changing the definition under restricted activities, and the member made reference to that, and I may have understood that a little bit more. However, it would not have been appropriate there either, because while it deals with the specific issue of psychological intervention and psychotherapy, it is deemed to be somewhat broad for any potential court challenge.

While this is similar to the definition that we worked with for quite some time in the development of the act, it was felt that this definition, to include in restricted activities, would be too broad to have the impact of being able to stand up in court, yet it's too narrow to be considered a general statement for scope of practice. So unfortunately I have to recommend that the members do not support this amendment either.

[Motion on amendment A6 lost]

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

MS LEIBOVICI: Thank you. The next amendment I will be proposing is dealing with the issue of diagnosis and that the making and communicating of a diagnosis should in fact be a restricted activity. Therefore, I'm moving that Bill 22 be amended in section 136 in the proposed schedule 7.1 of the Government Organization Act by adding the following after section 2(1)(r), and that is a new section called (s) which will say: "to diagnose or communicate a diagnosis."

Now, this is particularly an important amendment in that we know that the issue of restricted activities has been one of the major areas of contention between the groups as to what should and should not be a restricted activity, and in fact through a lengthy process there has been some agreement – and in some instances it may be a rather tenuous agreement – on a list of restricted activities. We also know that the reason for the restricted activities is that those are the particular activities that would be dangerous if in fact anyone other than an individual who can perform that activity is able to do so. So that's why there is the whole concept of restricted activity, and there has to be the concept of competency in order to perform that restricted activity.

***11:40***

Now, we dealt with the amendment around the issue of psychotherapy as a restricted activity and the breadth of that particular definition. In this amendment what I would like to focus in on is the issue of whether diagnosis could in fact be a restricted activity. We know that diagnosis is a necessary activity prior to the other restricted activities that are conducted by health professionals, whether it's prescribing medication or prescribing some other method of treatment. In fact, in looking at that, what has happened is that the government's implementation committee decided a diagnosis should not constitute a separate restricted activity.

Again, the psychologists feel that this is not supportable and that in fact sometimes the primary role a psychologist performs may be the assessment, diagnosis, and communication of a diagnosis of particular conditions or disabilities and that these diagnoses in and of themselves, if they are not done properly, could lead to improper classification, damaging interventions, or even denial of entitlement to services. In particular, if one were to look at the diagnosis of developmental disabilities in a child who is functioning poorly in school, if that diagnosis is not done properly, what might occur is that that child could be denied treatment, could be denied services that could affect that child's future successes within the school system and in other circumstances as well.

Therefore, because of the danger that the making and communicating of a diagnosis can provide if it's performed by untrained and unregulated individuals, I am proposing that be added into the list of restricted activities. In fact, there is an example of where this has been done. It has been done in the health legislation in Ontario, and we know how this government likes to link and be at one with the government of Ontario. This may be one of those circumstances where it may be useful to follow the lead Ontario has made.

So those are some of the reasons for putting forward this particular amendment. It is a responsible amendment and one that hopefully the government will see, in its wisdom, to accept.

Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thanks very much. The issue of a diagnosis as a restricted activity has been under discussion for quite some time. In fact, the committee that was struck to bring forward recommendations for restricted activities was really a hung jury on the issue. The report that came back did not have a recommendation one way or the other with respect to diagnosis.

There are basically two problems with diagnosis. First of all, it's very difficult to distinguish between assessment and diagnosis, and to come up with a definition for diagnosis that would not include assessment is very difficult. Everyone agreed that assessments should not be a restricted activity, and those proponents of diagnosis even had difficulty in distinguishing the difference between an assessment and a diagnosis.

The main reason why diagnosis is not included as a restricted activity is that it's felt very strongly that a diagnosis in and of itself does not pose a significant risk to the patient. It's when the diagnosis is acted upon. As part of the practice guidelines or medical knowledge that would be needed to deliver a restricted activity, it is assumed and it is expected that the individual professional that is delivering a restricted activity would only do so after verifying the diagnosis himself or herself or in fact making the diagnosis himself or herself. So for that reason, diagnosis is not included under the list of restricted activities.

I encourage members to not support this amendment.

[Motion on amendment A7 lost]

MS LEIBOVICI: Thank you. I move on valiantly to my next amendment.

MR. DICKSON: We're with you all the way.

MS LEIBOVICI: Thank you. I appreciate that.

My next amendment is that Bill 22 be amended in section 5 by

striking out subsection (4) and substituting the following:

> (4) A member described in subsection 2(a) or (b) continues to hold office after the expiry of the member's term until the member is re-elected or a successor is elected.
>
> (4.1) A member described in subsection (2)(c) continues to hold office after the expiry of the member's term until the member is reappointed or a successor is appointed.

Now, that may sound a little confusing, but what this particular amendment attempts to achieve – and again, the following amendments follow a little bit of the same theme in terms of ensuring that there can be no instance whereby a college or a council of a college would have the ability to in a sense take over and not respond to the wishes of their membership.

There is a concern not only amongst psychologists but amongst other professions as well that perhaps the general provisions in this bill are so broad-reaching and do not have enough checks and balances within the system that there may be the ability for a small group to in fact acquire and maintain perpetual power in their particular college. So what this amendment addresses is that in fact we look at elections occurring as opposed to appointments and that the whole notion of appointments be deleted from this particular section.

Now, I know that that may give concern to some organizations that do at this point appoint their members, and I do know that the public members can be appointed as well, but the fact remains that this is a very crucial issue that I believe needs to be addressed and explained as to the process by which a council is formed, the process for ensuring that in fact that council cannot become dictatorial in their approach to providing regulations, bylaws, and a code of ethics. One of the ways of ensuring this would be to have elections. Perhaps those colleges or associations at this point in time that have the appointments occurring: it would not be a bad idea for all those organizations to look at having elections of their members to ensure that in fact not only is the public interest addressed, which of course is one of the main reasons for the colleges, but that in addressing the public interest, the interests of the membership are not negated and are considered and are reflective of the organization they are a part of.

So that is one set of amendments I put forward in order to ensure that while the public is protected, there's also a check and balance that you will not have a small group acquiring or maintaining perpetual power and that ultimately that responsibility is made very clear through this amendment and that there is a limitation on the ability to abuse power by electing council members as opposed to appointing and reappointing. What happens is that you have an appointment and it is conceivably perhaps the wish of a group to maintain power, and if elections are not part of their bylaws or regulations, in fact what may happen is that you have a perpetuation and a reappointment of the same individuals.

***11:50***

I'm sure we can all think of some organizations where we have seen that occur, where it is very difficult for individuals to give up power. I would hope that the legislation we put in place ensures that that cannot be the case with any of the colleges or the councils of the colleges we will see established through this legislation in the next year or so.

I look forward to the response on this particular amendment.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. I'll deal in a little bit more detail with my comments on the next amendment because it deals with the same issue. This section provides for the ability of the council to continue its business should there be a circumstance where a member's term of office should expire. It provides for interim measures and maintains continuity. Again, the wording is consistent with the wording in other parts in this section of the act, and I will comment a little more fully when we get into the whole issue of appointments versus elections. I understand that the next amendment the member has deals specifically with that.

Again I urge members to not support this amendment.

DR. PANNU: Madam Chairman, I want to speak to support the amendment. I think it is a good amendment. The council's ability to make regulations I think also necessitates that the council be – because regulations are then binding on the membership, members as practitioners are certainly required by these regulations to engage in practice to make sure their professional conduct corresponds to the regulations.

In order for members of a profession to act according to regulations, they not only must refer to those regulations when engaging in professional conduct but must have full understanding of those regulations, and if they for some reason disagree with the regulations, then they should have some remedy by which they can change the regulations if the majority of practitioners so wish.

The amendment here then requires that regulations be . . .

THE DEPUTY CHAIRMAN: Excuse me, hon. member.

The hon. Government House Leader.

MR. HANCOCK: Yes. Madam Chairman, I'm wondering if the hon. member would entertain a question about whether he would cede the floor so that we could rise and report.

THE DEPUTY CHAIRMAN: Hon. member, the hon. Government House Leader is wondering whether or not you will entertain a question, and I will remind the committee that under Standing Order 60 we must report before midnight.

DR. PANNU: That's fine. Okay.

MR. HANCOCK: I would ask if he would cede the floor so we could rise and report and then let him get back with his debate.

DR. PANNU: Agreed.

MR. HANCOCK: Thank you.

Then, Madam Chairman, I would move that the committee now rise and report progress.

[Motion carried]

[Mrs. Gordon in the chair]

MR. TANNAS: Madam Speaker, the Committee of the Whole has had under consideration certain bills. The committee reports the following bills with some amendments: bills 23, 31, and 25. The committee reports progress on the following: Bill 22. 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. Also, I'd like to table copies of documents tabled during Committee of the Whole this date for the official records of the Assembly.

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

HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed? So ordered.

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

[Mrs. Gordon in the chair]

**Bill 22**
**Health Professions Act**
*(continued)*

THE DEPUTY CHAIRMAN: We are dealing with amendment A8. Hon. Member for Edmonton-Strathcona, continue.

DR. PANNU: Thank you, Madam Chairman. I would resume my comments on the amendment. I just want to make a couple more points.

In professional organizations the principle of peer control is always something that's considered absolutely essential to the appropriate functioning of regulated professions. Regulated professions, of course, are required to give primacy to public interest and the interest of their clients rather than the interest of the profession or the interest of the individual members. So the principle of peer control I think would justify that the regulations that are proposed by the council are in fact put to a vote by the members of the profession in general. Any bylaws or any regulations that may be proposed are subject to approval by their peers; that is, the members of a practising profession.

So it seems to me that this amendment and several amendments here that follow it in a sense all underline and first of all recognize the principle of peer control and peer judgment in coming to agreement on what regulations are most appropriate. Any council does not have a monopoly on the knowledge required to come to conclusions with respect to which regulations and which bylaws are appropriate for an appropriate practice.

So I would strongly support this amendment and other amendments related to this particular topic and would urge the sponsor of the bill as well as other members of this Assembly to support this amendment. Thank you.

[Motion on amendment A8 lost]

***12:00***

THE DEPUTY CHAIRMAN: The hon. member for Edmonton-Meadowlark.

MS LEIBOVICI: I'll keep on trying here.

MR. DICKSON: You're wearing them down.

MS LEIBOVICI: I know. I know. We'll eventually get one, I'm sure.

My next amendment falls closely on the heels of the previous amendment, which talked about the reappointment and appointment of individuals. While I can understand the rationale in terms of ensuring that there is continuity, with regards to this particular amendment it's very clear that the reason for it is to delete "the appointment . . . of an individual to be president for the purposes of this Act." It's a council appointing or providing for the appointment of an individual to be president for the purposes of this act.

What the new clause would then say – and it's section 7 in Bill 22 – is that "A council must elect or provide for the election of an individual to be president for the purposes of this Act." I've talked to and addressed some of the issues around the concern with regards to the checks and balances, the concerns with regards to having power concentrated in the hands of a few individuals. In fact, this would be a more democratic process for ensuring that councils in any one of the 30 professions that are under this particular bill are elected as opposed to appointed.

So again we're talking about the same principle. We're trying to ensure that the council addresses the needs of the membership in as comprehensive a manner as possible. And as we ourselves within this Legislative Assembly know, one of the ways of ensuring that there is an accountability structure built into the process that's established is by elections, for in fact the accountability to the membership and to the public is then maintained through that election process.

So I urge the members to look at this particular amendment and support it. Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. Again I cannot support the amendment. The act – and I've mentioned this before – is like a skeleton. It's designed to provide for maximum flexibility to each of the colleges as they set themselves up. The previous amendment referred to a section in which it talks about how some members are voting members. There's the ability for councils to have nonvoting members on a council, and then of course there are public representatives on a council. It may well be in the bylaws that voting members are elected, nonvoting members are appointed. It would be up to the college to make those kinds of decisions.

I do want to just caution the member. When she was speaking and dealing with a number of these amendments, she talked about concerns expressed by "the" psychologists. I need to caution her that the concerns she's referring to have been expressed by "some" psychologists. In fact, I would like to quote from a letter to the editor that is signed by Jean Pettifor, the president of the College of Alberta Psychologists, where she's responding to a recent article in the *Edmonton Journal*. The letter in part reads:

> The College of Alberta Psychologists wishes to respond to the inaccuracies of statements on which this report was based. First and foremost, the College will continue to elect its Council members, and the College will continue to consult with its members.

And the letter goes on from there.

So in this particular case the college is on record as saying that it is committed to continuing to elect its council members. But I have to point out that there are provisions within the act to allow the college to not only pass bylaws but have included in those bylaws the process by which bylaws would be accepted. There is maximum flexibility in the act, so I think we would be putting restrictions on the colleges that may not be appropriate in some circumstances.

Another example of a case where a college may wish to appoint a member would be to fill a vacant position due to illness or perhaps death of a council member. There may be an unexpired term of short duration where it would be in the best interests of the college to have someone appointed on a short-term basis. That, too, could be allowed for in the bylaws, so I urge all members not to support this amendment.

[Motion on amendment A9 lost]

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

MS LEIBOVICI: Thank you, Madam Chairman. The Member for

Medicine Hat is correct in terms of indicating that not all psychologists are opposed to some of the sections within the bill. The reality is that the College of Alberta Psychologists as well as the Psychologists' Association of Alberta have indicated that there are concerns with the bill. They have both indicated that their concerns may be different, but in fact they do have concerns with the legislation.

The interesting thing to note is that the Psychologists' Association comprises psychologists within this province. The College of Alberta Psychologists, which regulates those psychologists, you would think would have some kind of an interrelationship between the members of the association and between the college that provides standards. So hopefully there will not be instances of fighting between two groups, whether it's the psychologists or some other professional association that is enabled through this legislation. In fact, what we should be seeing is legislation that promotes a coming together of the groups as opposed to a tearing asunder.

The next amendment that I have to put forward is that Bill 22 be amended in section 1(1)(pp) by striking out subclause (xii). What that particular section is is that conduct that harms the integrity of the regulated profession is requested to be deleted. The reason for that request is that it is an extremely vague phrase and could have the effect of effectively squashing any dissent that might occur, especially when one looks at the fact that a conviction under this section carries the likelihood of hefty fines and the possibility of the loss of the right to practise. When we look at what those penalties are, it is then very important that any clause under this particular section in fact is as precise as can be in order to ensure that there is fairness in dealing with a professional who may be looked at as being censured under this act.

So that is the reason that this particular amendment is put forward. Again, hopefully the government will see its way to either deleting it or defining it more precisely so that in fact any council under any profession would not be able to use this section to intimidate its members.

Thank you.

***12:10***

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. This type of clause is not unusual in professional legislation. It actually came about as a result of the discussions we had this summer after the introduction of Bill 45, the precursor to Bill 22. This section deals with the definition of unprofessional conduct, and for the most part it tends to be fairly precise. The difficulties that colleges run into from time to time is that there are circumstances which arise that are difficult to predict and difficult to enunciate in verbiage under the definition section. So they felt that it was necessary to have one section that would deal with unforeseen circumstances not involved in the definition section because, after all, these hearings do end up being similar to a court proceeding.

I do need to point out, though, and I think it's important for all members to understand that any decisions that are made by the college with respect to unprofessional conduct are appealable both to the Court of Queen's Bench, and failing that, there is an opportunity for appeal and review by the Ombudsman, which is a new section to this act. So while I understand that there may be some concern with this particular area, it is not unique to the Health Professions Act. This is a type of clause that is common in self-regulated professional legislation, and it is always appealable to court. If a member feels that he or she has not been dealt with fairly, then there is the opportunity for an impartial judge to rule.

So again I urge members not to support this amendment.

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

MRS. SLOAN: Thank you, Madam Chairman. I'll just move to my chair . . .

THE DEPUTY CHAIRMAN: Yes. Would you move back to your . . .

MRS. SLOAN: . . . that has been so warmly occupied by my hon. friend and colleague from Edmonton-Norwood.

The amendment proposed by the colleague from Edmonton-Meadowlark I believe is deserving of more attention and analysis than what has been afforded it by the government this evening. Conduct that harms the integrity of a regulated profession, I would respectfully submit, could be open to broad interpretation. It's all well and good for the hon. Member for Medicine Hat to say that it is subject to appeal, as any decision made by a professional conduct committee would be. However, there are extensive costs and extensive scrutiny that a member of a regulated profession undergoes when they are reported to have conducted some type of act which is being examined for misconduct.

In this particular case I think that conduct that harms the integrity of the regulated profession is too obscure. I guess I question the rationale, what consensus the government solidified that that was actually required in the act, and how they would propose any consistency in its application throughout the 30-odd disciplines that it would be proposing to administer. So I would like to support the amendment provided by the hon. Member for Edmonton-Meadowlark to delete that section.

Thank you.

[Motion on amendment A10 lost]

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

MS LEIBOVICI: Thank you, Madam Chairman. My next amendment – and again the amendments are in themes even though they are individual amendments – deals with the ability of the council to make regulations. Also I will be addressing their ability to make bylaws and codes of ethics and standards in the following two amendments.

The first amendment that I'd like to address is that Bill 22 be amended in section 130 by striking out subsection (2) and substituting the following:

> (2) A regulation under this section does not come into force unless it is approved by
>
> (a) a majority of regulated members
>
> (i) present and voting at a meeting held in accordance with the by-laws, or
>
> (ii) voting in a mail vote conducted in accordance with the by-laws, and
>
> (b) the Lieutenant Governor in Council.

Basically what this section addresses is a very real concern that what may well happen – and again we touched on it briefly earlier this evening – is that there may well be a circumstance where a regulation could come into force and the regulated members would not be aware of that particular regulation which would control and provide for a methodology by which they would practise. In fact, there is a feeling that regulations that are related to the Health Professions Act should perhaps reinforce the standards of practice, which are the responsibility of the profession themselves, that those standards should be placed in the bylaws of the profession, and that

in fact these bylaws should occur with consultation and the approval of the membership.

That is an essential part of the bill and the concept with regards to this bill, but it is not within the main portion of the bill that that needs to occur in any systematic way, that in fact a regulation – and I'm jumping ahead to the next two amendments as well – bylaw, or code of ethics does not in fact have to prove in any systematic process that it has the support of the membership with regards to that amendment. So you may have a problem where an appointed council, for instance, is given sole control of an act and regulations to an act to amend bylaws or a code of ethics.

What we might well see is where a council may in fact decide to amend their bylaws so that there are no more future elections of council members. We may well see – and in fact we have seen this in the situation of the psychologists, where in fact that association does not need to provide its bylaws or its regulations to its membership. I believe it's the bylaws, not the regs. There is no input from the membership with regards to the development of its bylaws, so you could have potential for abuse. You could have a situation where a council could decide unilaterally on its remuneration, on its perks, on its benefits that it would pay itself. You could have a situation where there may be certain individuals within an association or within the college that the college would like to see perhaps ostracized, and there is no check and balance within the system to ensure that does not occur.

***12:20***

So the intent of this amendment is to try and prevent abuses of power. I am most interested in hearing what the Member for Medicine Hat has to say to assure individual members of the professions that there is a check and balance within the system so that you do not have a power grab occurring, and also that individual members retain the ability to bring motions forward proposing or amending bylaws and regulations to the membership for a vote, whatever system might be used in order to do that. In fact, a council could not unilaterally strip the membership of the ability to vote on or to have input into their regulations and bylaws and their codes of ethics, so there is that flow back and forth with regards to accountability.

I believe these are very legitimate concerns that run across all the professional groups. It is, I'm sure, with interest that the different groups will be looking at the comments that will be made with regards to this particular amendment.

Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. If I could, I would like to quote further from the letter to the editor that I referred to earlier. It goes on to say:

> The legislative framework for colleges to regulate their members requires accountability to government for compliance with legislation and the development of appropriate regulations and by-laws. There is no way that a small group of officers could abuse the system, either through pay, perks, and self-interest or irrational disciplinary action against other psychologists. Standards of practice can only be approved by government following consultation with members and other stakeholders.

Then it goes on and concludes by saying:

> There will be much work and consultation ahead for each of the Colleges in reviewing regulations and by-laws necessary for the implementation of the Act. Psychologists will certainly have a voice.

Again, that's signed by Jean Pettifor, the president of the College of Alberta Psychologists.

The very nature of the act requires extensive consultation with members of each of the colleges. Quite simply, if the college does not provide the minister with sufficient information and assurance that the members of the college are supportive of the bylaws, regulations, and code of ethics and standards, then that portion of the act simply will not be proclaimed.

The answer to this amendment is the same as the next amendment, which refers to bylaws, and the amendment after that, which refers to a code of ethics. I don't see the necessity for me to repeat myself three times, so I recommend that members do not support this amendment, the next one, or the one after that.

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

MRS. SLOAN: Thank you, Madam Chairman. I am pleased to rise also in support of the amendments proposed to sections 130 and 131. Regretfully, I cannot accept the arguments made by the hon. member this evening with respect to these aspects being addressed, particularly when as you read the sections in which the amendments are proposed, we have in fact requirements that would be required for "education, experience, enrolment in programs of studies," the initial criteria for entering a program plus the successful completion of examinations, in addition to the fees that the members of the regulated profession would be paying for regulation, in hand with the development of the practice standards and codes of ethics for that profession, and numerous other citations which I will not go through and read this evening.

Let it be on the record, Madam Chairman, that there are substantive issues in which the members of the regulated profession should be afforded the communication and the opportunity to have debate about the particular areas while they're under construction. Without the amendment posed by the hon. Member for Edmonton-Meadowlark, that debate is not going to be guaranteed to happen. I think the amendments lend themselves well to the government's reported desire to be more accountable to the public. By increasing the transparency, the process for debating and voting on such decisions within the regulatory bodies, I think in fact this amendment assists the government in achieving that objective.

Thank you.

[Motion on amendment A11 lost]

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

MS LEIBOVICI: Thank you. My next amendment is to amend section 131 by adding the following after subsection (2):

> (3) A by-law under this section does not come into force unless it is approved by a majority of regulated members
>
> (a) present and voting at a meeting held in accordance with the by-laws, or
>
> (b) voting in a mail vote conducted in accordance with the by-laws.

I must comment that it is interesting that the president of the College of Alberta Psychologists has put in writing that the bylaws and regulations would be determined in consultation with the membership. The other reality that the Assembly has to be aware of is that this is a college that has suspended the ability of psychologists to vote on bylaws and regulations. As a result, there is a concern within that particular profession, and I think we can extrapolate into what could occur in others if these concerns are not addressed. I for one do take the hon. Member for Medicine Hat's words to heart that in fact he is concerned and is willing to ensure that there is consulta-

tion in the development of regulations and bylaws in the colleges, but in fact there is always the concern that that may not occur.

Furthermore, with regard to the bylaws or the regulations the council has the authority to make those regulations without requiring the ratification of the membership or of the Lieutenant Governor in Council as was the case in the original bill. If in fact the college is not representative because they are not elected of the membership, there may be difficulties that occur. Therefore, this amendment is proposed in order to try and address that inadequacy in the legislation.

Thank you.

[Motion on amendment A12 lost]

***12:30***

MS LEIBOVICI: My next amendment is amending section 132 by adding the following after subsection (3):

> (3.1) A code of ethics and standards of practice under this section does not come into force unless it has been approved by a majority of regulated members
>
> (a) present and voting at a meeting held in accordance with the by-laws, or
>
> (b) voting in a mail vote conducted in accordance with the by-laws.

This is based upon the same principles as my other amendments have been and in fact, given that it deals with the code of ethics of the college, is a very pertinent amendment that needs to have the input and needs to have the support of the membership in order to ensure that it is a code of ethics that's supported by the profession.

Thank you.

[Motion on amendment A13 lost]

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

MS LEIBOVICI: Thank you. Moving right along here, Madam Chairman, if we move back to schedule 22, my next amendment is to amend Bill 22 in section 9 by striking out subsection (1) and substituting the following:

> 9(1) Any complaint made on or after the coming into force of this Schedule that relates to conduct occurring before the coming into force of this Schedule must be dealt with as if this Schedule and Part 4 had not come into force and the Psychology Profession Act had not been repealed.

The concern here that this particular amendment is attempting to address is that rules could be applied retroactively, and if the section in its current form exists, complaints would now be able to be laid regarding behaviours which occurred when the old act was in force and which would not have been considered as misconduct at that time. So the concern is that punishing people for acts committed in the past based on wisdom obtained by hindsight may be excessive, and while ignorance of the law is no excuse, ignorance of future law might be a justifiable defense.

The concern is: if the act is passed in its current form, how can members who have acted in good faith or who may have naively committed an act under the old act be assured that this would not be seen as misconduct and would not be seen as an offence and prosecuted? So that is the concern that this particular section is attempting to address, and I look forward to the government response.

Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you. This section doesn't so much refer to the act as it refers to the process. What it is saying is that if there is a complaint that is made after the act comes into force, it is dealt with under the set of processes for hearings that is laid out in this act. It's only reasonable to deal with it that way because many of the colleges would have to run a dual system of disciplinary hearings.

This act says that there must be public representation on the hearing, and it deals with the ability for appeal to the Ombudsman. It has some significant changes in process from what may have been in previous legislation. So while the member makes a good point, that one should not be tried for something that one was not aware of, it's not the issue of what an individual did. The issue is how the individual is going to be dealt with and what the process will be to deal with the complaint.

So again I urge members not to support this amendment.

[Motion on amendment A14 lost]

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

MS LEIBOVICI: Thank you, Madam Chairman. My next amendment deals with the continuing competency of programs and that the sections dealing with 50(2)(b), with regards to practice visits, as well as 51 to 53 be deleted. This is a request coming from the viewpoint of confidentiality and that in fact confidentiality may be breached with regards to the competency programs. It is from that perspective that this particular amendment is proposed.

We know that the professions are very concerned about confidentiality and are very concerned in that there may be circumstances where individuals would not want their files disclosed or looked at. This amendment is put forward with those thoughts in mind.

Thank you.

MR. RENNER: The issue of continuing competence is key to this act. Part of continuing competence and a very important part as expressed by the professions is the ability for a peer review practice visit, particularly for professions that practise in independent practice. I really don't think that the issue of confidentiality is material in that this is a peer review, so those that would be asked to conduct the practice review would be professionals themselves from the same profession and would be bound by the same code of ethics with respect to confidentiality. The professions have made it very clear that they feel that some form of peer review is important to continuing competence.

I also need to point out that again this is not mandatory. This is something that is available to professions should they decide to use it. If they decide not to pursue practice visits, they need not do so.

[Motion on amendment A15 lost]

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

MRS. SLOAN: Thank you, Madam Chairman. I am pleased this evening to rise to introduce an amendment to Bill 22, and I believe it has been circulated. I'd like to move that Bill 22 be amended in section 136 in the proposed schedule 7.1 to the Government Organization Act by striking out section 3.

This particular section as it currently reads, Madam Chairman, allows for the health professions advisory board under this act and the minister to

> 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.

Now, of course we know at this point in time that the regulations for this act have not been written, so we don't have the ability to be able to debate it in an applicable form, and it has not been the subject of much discussion in the debates of the bill thus far. I do not recall that the government has in fact laid out for the public and for the professions what types of conditions this particular article would be activated under. I do not recall that at least in the public context of consultations it was something the professions were specifically asked about. What circumstances might require this type of step to be taken?

***12:40***

It seems to me it's also contrary, Madam Chairman, to the government's proposed agenda to make health professions more accountable to the public and inspire them to reach higher levels of public safety. That in fact all seems to be thrown to the wind, if at any given time for whatever reasons not yet defined, the advisory board and the minister can out of the blue make a restricted activity a service that can then be delivered by nonregulated personnel.

I attempted in my own mind to try and think of the circumstances in which this government might be planning or speculating that this type of article could be utilized, and several instances came to mind. One is an attempt to impede, delay, or disrupt intended work shortages, which is very much a part of our current reality with the registered nurses in the province currently in mediation and talk of strike action growing day by day. It would perhaps not be that absurd, Madam Chairman, for the government in such circumstances to threaten a particular profession and say: well, if you choose to take action in opposition, then we will utilize our powers under section 136 and make these particular aspects of your restricted activities open to the open market, if you will, offering them as a commodity to personnel who would be perhaps cheaper or available in greater numbers.

Another instance that comes to mind in which the government may be choosing to address it is if the critical shortage in some disciplines within the health professions continues to be a problem over a period of time. In effect, what the government could say is: "Well, we debated Bill 22 in 1999. We had no way of knowing how critical the shortage of physicians, registered nurses, psychologists would be in five or 10 years, so at this point in time, knowing that those difficulties exist, we've now decided that through regulations we're going to make these segments of restricted activities for those professions open to be delivered by nonregulated personnel."

I would question the government as well on this particular section as to the impact that it has on standards, competency requirements, codes of ethics. When a government deems through some process yet to be defined that an unregulated provider may perform those activities which have been previously subject to all of these other processes for review and competency and public safety, is there not a risk of liability and litigation by undertaking to deregulate an act which has been subject to all of these other precautionary reviews and scrutiny, Madam Chairman?

So in all of those respects I would suggest that this is certainly in order and very much needed to ensure that the public is in fact assured of safety within the health professions and, perhaps most importantly, assured the provision of safe care regardless of what the regime, ideology, or agenda of the government might be on that particular day or point in time.

With those thoughts, Madam Chairman, I'm pleased to conclude my debate on this amendment.

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

MS LEIBOVICI: If I may just add to the statements by the Member for Edmonton-Riverview, it is particularly important in looking at the composition of the health professions advisory board that it indicates at least 25 percent of those members should be regulated members. The question is: who and how is it decided which professions would be represented on the health professions advisory board? How can an advisory board provide advice to the minister if professions are not represented on that particular board? The other issue with the health professions advisory board is that it can usurp the independence of self-regulating professions. So the role and the impact and the broad-reaching ability of this board to provide advice, to investigate, and to help in the decision-making of the government is something that I think needs to be scrutinized more closely.

What the government may wish to consider if they are not willing to delete the board and even though this wasn't an amendment to do that, if they are not willing to look at that as a possibility, is perhaps having an expanded and fully representational council of health professions for the purpose of information exchange and a forum for the government and all health professions to discuss critical issues and legislation, regulations, law, and issues, in particular such as those which would be the making of regulations authorizing a person other than a regulated member to carry on activities under this act.

Thank you.

MR. RENNER: The purpose of this section is to allow the minister to deal with unforeseen circumstances where we have a situation – and I referred to it earlier – where there is a very small group of individuals who are involved in the operation of heart/lung machines in the specialized surgical suites at the University hospital across the river. There may be other circumstances like that throughout the system that frankly we're unaware of at this time. So the purpose of this section is to allow the minister to deal with those unforeseen circumstances where an individual or a small group of individuals are in fact providing restricted activities that could not have been foreseen when the act was drafted.

Concerns similar to those expressed by the Member for Edmonton-Riverview were expressed by the AARN in earlier drafts of the act. In fact, the reason for the inclusion of the health professions advisory board was to ensure and to give assurance to the AARN that this was not designed to allow the minister to get around and deal with some of the issues that the member referred to.

The role of the advisory board is primarily consultative. They are the conduit for professional consultation, so by referring the situation to the board, the role of the board would be to contact all of the relevant stakeholders, the relevant colleges and make sure that everyone is aware of the situation before the minister goes ahead with a recommendation. After that provision was added to this section, the AARN indicated to me that they were happy with this section. They agreed with the intent of this section, and they felt that there are sufficient safeguards in place to ensure that the minister cannot abuse this exemption. So, again, I urge members not to support the motion.

[Motion on amendment A16 lost]

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

MRS. SLOAN: Thank you, Madam Chairman. Not to be dissuaded

by the government's opposition to that last amendment, I would like to rise to bring forward an amendment to Bill 22 in section 46(1)(b) which would read as follows: in subclause (iv) by adding "direct or indirect" before "supervision" and, B, by adding the following after subclause (iv): (v) administrative or legislative services that establish public policies affecting the regulated profession.

***12:50***

This section as it is currently written within the act sets out the requirements for registration in a regulated profession, and it includes those that provide professional services directly to the public, services which manufacture dental appliances or conduct laboratory tests, the teaching of a practice of a regulated profession to members and students of that profession, and currently reads "the supervision of regulated members who provide professional services to the public." The intent of the first aspect of my amendment this evening is to make the last subsection apply both directly and indirectly to supervision of regulated members.

Having some firsthand knowledge of how the workplace is currently configured, Madam Chairman, in many respects the immediate supervisor of professionals working on the front line is not in the direct vicinity of that individual. In fact as the system has been regionalized, managers have been eliminated, and those remaining have been given increasingly larger portfolios to administer and manage, so it is most often the case that we have professionals who are practising without immediate direct supervision on the floors and in the communities in this province. So to ensure that the application of registration applies to all levels of that supervision, including those who might have the designation as being a manager or director of a particular area but does not in fact practise side by side with a member of the regulated profession, this amendment would intend that they are also responsible for their decisions, their configuration of the workplace, the requirement that the necessary supports be there to ensure that members providing services directly to the public are afforded the supports that they require to deliver care in a manner that meets the practice standards and codes of ethics under which they are governed.

The second component of the amendment adds a new section which is intended that members of a regulated profession who are offering administrative or legislative services would also have to be registered.

Now, just to provide some examples of where or perhaps how this might be applied. We might have a member of a regulated profession who is a chair of a regional health authority perhaps or maybe even a CEO, and they may in fact carry a professional designation as a regulated professional, but at current the act would not require them to be registered even though they might be making decisions. They might be configuring the budget. Subsequently the provision of services within that region would directly impact members at other levels within that environment, but they would not by this act, Madam Chairman, have to be registered.

Similarly, we could have the Deputy Minister of Health in a position to directly influence the development of public policy as it applies to health care in this province. That person could be a physician, but as this act currently reads, they would not be required, despite the fact they are directly impacting the policies, legislation, the budgets of that particular area, in fact to be registered as a regulated profession.

There is absolutely no doubt in my mind and I suspect in anyone's mind that a person in that type of position would in fact directly affect the ability of other regulated members of that profession to practise in a safe manner, in a manner in which meets not only the government's objective of public safety but the profession's own competency requirements, standards of practice, and code of ethics. To have that person be able somehow to operate outside of this act is not accountable. It certainly doesn't meet the objective of public safety and in many respects I think goes directly against the tenets of the marketing plan that this government has used to argue that this bill is necessary.

So with those thoughts, Madam Chairman, I'm pleased to offer this amendment for the government's consideration this evening. Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. The first part of this amendment is redundant as a result of the government amendment that was passed earlier in committee whereby direct or indirect supervision will be under the control of the college and will be defined by the college.

The second part of the amendment deals with mandatory registration for professionals involved in administration or legislation. Frankly, I think this is unreasonable interference into an individual's life. This deals with mandatory registration. I must point out that individuals who are involved in administration – in fact, I'm assuming by the amendment this would even require MLAs who are members of professional associations to maintain their membership. They certainly can do so on a voluntary basis. There's nothing in the act that prohibits them from doing so, but I think it would be unreasonable for them to be mandated by legislation to maintain professional memberships.

I again urge members not to support the amendment.

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

MRS. SLOAN: Just one comment, Madam Chairman, after the member's comments with respect to this amendment. It's not good enough to say that direct or indirect supervision is accomplished by making that the jurisdiction of the college. When I last read this bill, there was nothing within the act that allows the colleges the ability to go into the workplaces and in fact conduct assessments or to enforce that the environments which employers are configuring in this province are conducive to supervision being offered and practice being undertaken in a manner that's safe and ethical.

It's the other half of the equation that you're not addressing, the half that lies beyond the reach of the practising professional, that lies within the boundaries of the employers in this province that have increasingly been forced to make workplaces unsafe for the provision of care because of the underfunding of this government.

So I'm sorry; I don't accept the argument submitted by the member on the first point of the amendment. We will expect that the government will oppose it and that they will also suffer the repercussions of it at some point in the future.

Thank you.

[Motion on amendment A17 lost]

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

MS LEIBOVICI: Thank you, Madam Chairman. We have two more amendments left, and they are both very important amendments. The second to last amendment that I am proposing is that Bill 22 be amended in schedule 21, which is the schedule entitled Profession of Physicians, Surgeons, Osteopaths and Podiatrists, in section 8(1)(a) – for those that are looking for where that section is, it's on page 231 of the act – by adding "non-regional hospital or private hospital" after "hospital."

I've looked very closely at what this particular section says, and I've looked at the old Medical Profession Act, which is the act that is replaced by this particular schedule. It is interesting to note that in fact it is not status quo, that in fact what we see within the Medical Profession Act is that that particular act exempted federal, provincial, or municipal government run facilities that were diagnostic and treatment facilities and also those facilities that are approved hospitals under the Hospitals Act.

***1:00***

When you look at section 8(1), what you see is that included within this particular bill are:

> (b) a hospital operated by the federal government,
> (c) a health care facility operated by the federal government or the Government of Alberta,

which is interesting, that it's not considered a hospital,

> (d) a hospital, clinic or centre operated by the Alberta Alcohol and Drug Abuse Commission,

and that was not outlined in the Medical Profession Act, and

> (e) a facility within the meaning of the Mental Health Act or a diagnostic and treatment centre established for the purpose of section 49(b) of the Mental Health Act.

That in fact was not outlined specifically under section 93(1), which was the section of the Medical Profession Act that exempted the college from providing approval for services that are provided within a hospital setting. In fact, an approved hospital within the meaning of the Hospitals Act is in both those particular acts. So what we have in fact, Madam Chairman, is not the status quo when we look at schedule 21.

So the amendment that is proposed by the Official Opposition, to include after an approved hospital the words "non-regional hospital," as is indicated within the Hospitals Act, as well as "private hospital," would make it very clear that the intent of the government would be not to allow private, for-profit hospitals to be approved through the College of Physicians and Surgeons.

It's interesting to see the change in the wording. When you look at what the old Medical Profession Act indicates, it even talks about diagnostic and treatment facilities being exempted, as it were, from the College of Physicians and Surgeons. In here we no longer talk about diagnostic and treatment facilities. We talk about "facilities in which regulated members . . . provide or cause to be provided diagnostic or treatment services." That's very different, I submit to the Legislative Assembly, and those words may in fact provide a loophole for corporations who would like to enter this province with private, for-profit health care hospitals. It may provide more of an opening as opposed to a closure.

So I would be interested in seeing what legal opinions the government has with regards to the changes in the wording and the inclusion of certain areas and not others and also if the government is at all concerned about the fact that private, for-profit hospitals are still able to enter this province through the ability of the council of the College of Physicians and Surgeons to make regulations, because they haven't been exempted under 8(1), as they could well have been under this particular act.

I had talked earlier with regards to the importance of ensuring that the door is closed on private, for-profit health care in this province. This amendment would definitely shut the door much tighter than the amendment the New Democrat opposition has put forward and would make very clear the government's intention to support public health care within this province and not private, for-profit health care.

I look forward to the government's remarks on this particular amendment. Thank you.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. I look at the great clock on the wall, and I see it's 10 after 1 in the morning. All I can say is that I'll refer members back about two hours ago. If you're reading *Hansard*, just flip back a few pages to where I commented on the amendment brought forward by the Member for Edmonton-Strathcona. My reply would be exactly the same. This is to the same section of the bill.

Again I urge members not to support this amendment.

THE DEPUTY CHAIRMAN: The hon. Member for Edmonton-Meadowlark has moved amendment A18. All those in favour of amendment A18, please say aye.

SOME HON. MEMBERS: Aye.

THE DEPUTY CHAIRMAN: Opposed, please say no.

SOME HON. MEMBERS: No.

THE DEPUTY CHAIRMAN: It's defeated.

[Several members rose calling for a division. The division bell was rung at 1:08 a.m.]

[One minute having elapsed, the committee divided]

[Mrs. Gordon in the chair]

For the motion:

| | | |
|---|---|---|
| Bonner | Massey | Sapers |
| Dickson | Nicol | Sloan |
| Gibbons | Olsen | White |
| Leibovici | | |

***1:10***

Against the motion:

| | | |
|---|---|---|
| Amery | Hancock | McFarland |
| Broda | Havelock | Melchin |
| Cao | Hlady | Oberg |
| Coutts | Jacques | Renner |
| Doerksen | Johnson | Shariff |
| Dunford | Klapstein | Stelmach |
| Fischer | Laing | Stevens |
| Friedel | Lund | Woloshyn |
| Fritz | Mar | Yankowsky |
| Graham | McClellan | Zwozdesky |

| | | |
|---|---|---|
| Totals: | For - 10 | Against - 30 |

[Motion on amendment A18 lost]

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

MS LEIBOVICI: Thank you, Madam Chairman. I have one more amendment to bring forward, and that is that following section 95 is a section called Contravention of Orders.

> 95.1 No employer or other person shall knowingly require a regulated member to provide a health service that would result in the regulated member contravening an order of a hearing tribunal under section 82 or of a council under section 89(5).

The amendment is rather self-explanatory with regards to an order of a tribunal coming forward and that a member would not be required to transgress that order.

Thank you, Madam Chairman.

THE DEPUTY CHAIRMAN: The hon. Member for Medicine Hat.

MR. RENNER: Thank you, Madam Chairman. This amendment is lifted almost entirely from the current Nursing Profession Act. Frankly I think it does bring an enhancement to the bill, and for that reason, I recommend that members accept this amendment.

[Motion on amendment A19 carried]

[The clauses of Bill 22 as amended agreed to]

[Title and preamble agreed to]

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

SOME HON. MEMBERS: Agreed.

THE DEPUTY CHAIRMAN: Opposed?

SOME HON. MEMBERS: No.

THE DEPUTY CHAIRMAN: Carried.

**Bill 35**
**Government Fees and Charges Review Act**

THE DEPUTY CHAIRMAN: Are there any comments, questions, or amendments? The hon. Member for Edmonton-Glenora.

MR. SAPERS: All right, Madam Chairman. There has been a tremendous amount of public debate about Bill 35, and the government started off saying that this bill is great. They've already accepted one amendment. Then they defended the bill by saying that it does everything it needs to do, and of course it doesn't. There are three major flaws with the bill. Number one, it doesn't cover all the fees and charges that need to be addressed, thereby Alberta taxpayers will continue to have to pay exorbitant and baseless fees. Number two, it allows those exorbitant fees to be charged for a period of up to one year before there will be any redress. We think that's far too long. Thirdly, the bill most notably doesn't address the very core of the Eurig estate decision, which was to ensure that there's a relationship between the cost of the service being provided and the fee that is charged.

So without prolonging this morning's debate, I'd like to provide an amendment for the consideration of the Assembly. I've forgotten where we were before in the hit parade of amendments, so I don't know what number this will be. This amendment will begin to address at least one of those deficiencies.

THE DEPUTY CHAIRMAN: Hon. member, we do not have the amendment.

MR. SAPERS: It's coming.

THE DEPUTY CHAIRMAN: Okay. It will be A3.

Hon. member, how many amendments are you proposing to bring forward over the next little while?

MR. SAPERS: Well, Madam Chairman, that's a matter of strategic importance to the Official Opposition, and I would just as soon . . .

THE DEPUTY CHAIRMAN: I just thought maybe it might be worth while handing out two or three at one time so people can study them. It's just a thought, hon. member.

MR. SAPERS: All right. I have several envelopes of these. Have these all been distributed?

I think all members have a copy of the amendment now. It's a very straightforward amendment. I move that Bill 35 be amended in section 1(3) by adding "where that amount corresponds to the cost of service" after "the amount referred to in Schedule 2." Of course, what this would do is ensure that the legislation does what the Treasurer has said it's intended to do, and that is to guide the review to determine whether or not there is a relationship between the cost of the service and the amount that's in the schedule. Schedule 2, for those members that haven't read it, is a schedule that lists hundreds and hundreds and hundreds and hundreds of user fees that have been imposed by this government. Of course it's not an exhaustive list. It's a rather exclusive list because it leaves hundreds of user fees out, about $900,000 worth on an annual basis.

In any case, this amendment begins to address at least one of the major shortcomings of the bill. I'd be very interested to know the government's response to this amendment, so I will anticipate some commentary before I continue.

THE DEPUTY CHAIRMAN: The hon. Government House Leader.

MR. HANCOCK: Well, thank you, Madam Chairman. As the hon. member I'm sure appreciates, this amendment is not acceptable in that it totally eviscerates the bill itself. The purpose of the bill, as he well knows, is to put a standstill on fees for a year while they can be reviewed and reviewed in the context of the concept that fees should cover the services they're designed to provide. One of the sections of the bill is to hold the fees firm, to basically legislate those fees until they can be reviewed. By putting this amendment in, it in essence would defeat the whole purpose of the bill, because there would be no certainty with respect to the fees that are currently in place. I think the hon. member should realize that this amendment is totally contrary to the purpose of the bill, which is to put a standstill on the fees for the year while they're being reviewed. So it must be defeated.

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

MR. SAPERS: Is not contrary, would not nullify the bill, and should be accepted.

[Motion on amendment A3 lost]

MR. SAPERS: Well, the government bill can still be rescued in part, Madam Chairman. There's another section in the bill that also provides an opportunity to try to tie the government down to putting into legislation what it claims it's trying to do, and that is to establish a correlation between the level of revenue raised by the fee and the cost of service that's associated with that fee. Towards that end I'd like to move amendment A4, I guess it would be, which is being distributed as we speak. I'll just pause for a moment until all members have a copy of that amendment.

***1:20***

THE DEPUTY CHAIRMAN: Go ahead.

MR. SAPERS: Thanks very much. I believe most members have a copy of this amendment now. I will move that Bill 35 be amended

in section 1(5) by adding "that establishes a correlation between the level of revenues raised by the fee or other charge and the cost of service associated with that fee or charge."

The purpose of this amendment is to ensure that any act that would increase a fee or charge must include a correlation between the level of revenues raised by the fee or charge and the cost of service associated with that fee or charge. We're not anticipating that any such legislation would come in during the review period, but you know, the government has been known to on the one hand make a move to freeze fees and on the other hand bring in new fees. In fact, one such fee was raised today in question period, a $100 mapping fee that was snuck in after the notion of a fee freeze was first broached by the Provincial Treasurer. So we want to make sure that the legislation binds the government to protect taxpayers. We don't want to leave them this kind of loophole.

Towards that goal of tightening up this loophole, I'm hoping the Assembly will in fact agree that the bill should be amended in section 1(5).

THE DEPUTY CHAIRMAN: The hon. Government House Leader.

MR. HANCOCK: Thank you, Madam Chairman. In the interests of encouraging this bill to be passed, because it's an absolutely necessary bill for Albertans and we want to get those fees and charges down as quickly as possible, I would encourage members of the House to accept this amendment. The amendment really doesn't accomplish a lot because the whole purpose of the bill is to make sure that the review will allow fees and charges to be reviewed and to be associated with the cost of services that are associated with the fees and charges. So that's the whole intent and purport of the bill. That's been the stated intention of the bill.

Adding this doesn't make it any better, but it does make it explicit. For that reason and for the reason that we'd like to get on with doing this job, I would encourage all members to please vote for this amendment.

MR. SAPERS: The hon. Government House Leader is somewhat correct that this amendment has a more limited effect than amendments A1 or A3 would have had, but it seems that we have to take what we can get in terms of protecting the interests of Alberta taxpayers. So if the government is willing to accept this amendment, it gives us some encouragement, and we'll see what happens with subsequent amendments.

[Motion on amendment A4 carried]

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

MR. SAPERS: Thanks very much, Madam Chairman. The next amendment I would like to propose is one that deals with the next subsection of the bill. I would move that Bill 35 be amended in section 1(6) by adding the words "that establishes a correlation between the level of revenues raised by the fee or other charge and the cost of service associated with that fee or charge" after "may not be increased from that amount except by an Act." The purpose of this amendment is to ensure that cabinet decreases the amount of the fee or other charge by regulation and subsequently brings in an act to increase that fee or charge. The act must provide a correlation between the level of revenues raised by the increase in the fee or charge and the cost of service associated with the increase in that fee or charge.

We have seen previously, Madam Chairman, where this government has said that it needs legislation because it can't trust itself. Those are the words the government used about things like legislating that there would have to be a referendum before tax increases or legislating that you can't have a deficit budget. We find it curious that the government would not tie its hands in that same way, because certainly we have the same skepticism about the government's ability to trust itself. So I would ask that in keeping with the amendment we just passed in subsection (5) of section 1, we quickly add the same kind of protection to taxpayers in section 1(6).

MR. HANCOCK: Once again, Madam Chairman, I have confirmed with the sponsor of the bill and it will be evident from the commentary and debate that's happened in the House that this is entirely consistent with what the whole purport of the bill intends. It's not necessary in order to carry out the effect of the bill; it's what was intended with the bill. But it certainly makes the section more explicit, and for that reason I would encourage all members of the House to support the amendment.

[Motion on amendment A5 carried]

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

MR. SAPERS: Thank you. I thought you were going to recognize the Member for Lethbridge-West.

We now have the situation where five amendments have been introduced. Three have been accepted by the government, and this is the bill that the government of course said the Liberals were trying to delay passage of. We're not trying to delay passage. We're trying to ensure that when the bill ultimately is passed, it does in fact protect the taxpayers of Alberta. We want to make sure that the government doesn't continue to gouge taxpayers for any longer than they already have been gouged, so towards that end I'd like to move one more amendment.

This final amendment, which is being circulated, Madam Chairman, deals with the timing of the bill. The Eurig estates decision came down in the Supreme Court just over six months ago now. There was an immediate attempt by the Official Opposition to alert the government to the importance of that decision. In fact I wrote the Treasurer and every member of Executive Council personally asking them what they were doing in their departments to deal with the impact of the Eurig estates decision by the Supreme Court of Canada. In particular I asked every government department to provide cost-of-service data as well as a list of all the fees and charges that were established in their ministries. I received answers from most ministers that provided a list of fees but no cost-of-service data.

The Treasurer assured me that that cost-of-service data was being compiled. That means that for the last six months this government has had a head start on dealing with what they've suggested they need to deal with in this legislation. Curiously, though, the legislation gives the government another 12 months – so that would be 18 months in total – before the cost-of-service review is completed. Until then of course all of the fees will be frozen.

Now, the Treasurer will try to argue that by freezing the fees at the levels they're set at today, this is a good thing and he's doing us all a favour. The reality is that by freezing the fees, they keep this very high, unjustifiable set of fees in place. It's like being told that you're going to be overcharged at your grocery store, but you're only going to overcharge for a year, so don't worry about it, or we're going to overcharge you at the gas pumps, but it's only for a year, so don't worry about it.

The fact is that this government has no cost-of-service data. They've had a six-month head start to collect it. They can't justify

where the fees are set now, and we think this is an unacceptable state of affairs and should be corrected sooner rather than later. So the purpose of this amendment is to shorten the time line.

I would move that Bill 35 be amended in section 3 by striking out "July 1, 2000" and substituting "January 1, 2000." The effect of this amendment is straightforward. It means that it will only allow the government six months to keep on charging those extra high user fees.

***1:30***

We believe that the review of user fee charges being conducted by the government's committee should be completed by the end of the calendar year so that Albertans can get this relief that they have been promised and that they deserve at the soonest possible date. Treasury has already had six months, as I've said, and an additional six months is more than ample time for the government to keep its word on this matter.

MR. HANCOCK: Well, Madam Chairman, the Member for Edmonton-Glenora is a contradiction in terms. First of all, he wants a wide and thorough investigation of every fee that's charged by any delegated organization, college, technical institute, or any other body that might possibly be charging a fee, and now he wants to limit the amount of time to undertake a thorough job of the process. There's nothing in the legislation which indicates that all fees will be outstanding for a full year or that the committee will take a full year to report, but it would be folly to limit the amount of time unduly. One year is a perfectly reasonable amount of time to ask a committee to undertake a task of this nature. By shortening the period of time unnecessarily, we simply ask them to hurry and perhaps not do as thorough a job.

So I would encourage members of the House not to support this amendment, to pass the remaining clauses of the bill, and let's get on with the task of reviewing fees and charges to make sure that they're appropriate in every way and do that as quickly as possible.

MR. SAPERS: I find it curious, Madam Chairman, that when this government wants to cut services, they follow the lead of the Minister of Energy and nakedize government departments and act on the advice to move quickly, to not look back and ask questions later. It seems to me that when it's in the government's own self-interest to keep their pockets full of taxpayers' change, they need a careful, slow – painfully slow – and very costly review just to make sure that they do it right. They weren't interested in doing it right on the downside when it comes to social programs and services provided by government. All of a sudden they've found this religion of doing it right and doing a thorough job.

This is a very interesting contradiction and a real irony. The fact is that this government has had plenty of time, and the only reason that they want to take another year and freeze these fees – and make no mistake about it; these fees won't be lowered during this review period – is that this government wants to maintain this cash cow just as long as they can before putting it out to pasture.

We are not deceived by the argument, and taxpayers won't be deceived by the argument. It really is a shame. The government has often chided the opposition for being tax-and-spend Liberals, and of course now we know that it's these usurious user-fee Tories that we've got governing the province of Alberta.

So I regret that the Government House Leader has advised his colleagues to vote against this amendment, which would bring faster relief to the taxpayers of this province, but I know the right-thinking members of his caucus won't accept that advice and that they will support this amendment because they know that it's the right thing to do.

[Motion on amendment A6 lost]

MR. SAPERS: Fifty-fifty. Well, we're batting five hundred here in protecting the taxpayers of Alberta. It's clear that we were going to have a standing vote on that hon. members, and we didn't, so we won't be able to record in *Hansard* the fact that every government member present voted against that amendment, but I guess that's just the way it is.

Bill 35 still needs a lot of help; it's far from a perfect bill. The government has indicated that it will use closure if we don't proceed with this bill. That's a real shame that the government would even threaten closure on a bill that deals with the rights of taxpayers, but this government is no stranger to closure and no stranger to closing the door on democratic debate. So the debate will have to continue at third reading, Madam Chairman. I'm not prepared to go through the charade anymore of introducing amendments simply to be dismissed out of hand by an insensitive government, so we'll deal with the remainder of this bill at third reading.

[The clauses of Bill 35 as amended agreed to]

[Title and preamble agreed to]

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

SOME HON. MEMBERS: Agreed.

THE DEPUTY CHAIRMAN: Opposed?

SOME HON. MEMBERS: No.

THE DEPUTY CHAIRMAN: Carried.

MR. HANCOCK: Madam Chairman, given that we've made such wonderful progress, I'm very reluctant to stop while we're ahead. The Opposition House Leader encourages us to keep going, and with that invitation . . . [interjections] However, being that it is 20 to 2 in the morning, I would move that the committee rise and report.

[Motion carried]

[Mrs. Gordon in the chair]

MR. SHARIFF: Madam Speaker, the Committee of the Whole has had under consideration certain bills. The committee reports the following with some amendments: bills 22 and 35. 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: Does the Assembly concur in the report?

SOME HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed?

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: So ordered.

[At 1:40 a.m. on Tuesday the Assembly adjourned to 1:30 p.m.]