

## Legislative Assembly of Alberta

Title: **Monday, November 22, 1999** 8:00 p.m.

Date: 99/11/22

[Mrs. Gordon in the chair]

THE ACTING SPEAKER: Please be seated.

head: Government Bills and Orders  
head: Second Reading

### Bill 44

#### Insurance Statutes Amendment Act, 1999

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

MS GRAHAM: Thank you, Madam Speaker. This evening I rise in the House to move second reading of Bill 44, Insurance Statutes Amendment Act, 1999.

It is a brief act, Madam Speaker, amending just a very few sections of the Insurance Act. As members of the House will recall, the existing Insurance Act was rewritten and a new Insurance Act was passed in the spring session of the Legislature. That act was given Royal Assent, but it has not yet been proclaimed as there are a number of regulations that need to be drafted and prepared before the act can be proclaimed. That is expected to take place early in the new year.

Members will also probably recall that during the debates on that Insurance Act it was pointed out that the Insurance Act, which was originally passed in 1915, had not been substantially amended in any major way until this major rewrite. The rewrite was the result of extensive consultation with the industry and a great deal of research. It addressed two prime areas, and those were the financial regulation of insurance companies and the market conduct of insurance. Many changes have taken place in the marketplace since 1915, so changes were needed to reflect the new marketing practices not only for insurance but for other products as well.

Madam Speaker, the unproclaimed Insurance Act has nearly 900 sections, but there are only three sections which need amendment to reflect the policy intentions underlying the new act. They are all relatively minor in nature and of a housekeeping nature, I would say.

There is one more major and substantive amendment, and that relates to two definitions that are being added to the act, both the existing Insurance Act and the unproclaimed new Insurance Act. Those are the definitions of "spouse" and the definition of "common law relationship." They are responding to an Alberta Court of Queen's Bench decision earlier this year, in February, which has been suspended. Its operation has been suspended for 12 months, but it holds that section 265(2) of the existing Insurance Act is unconstitutional without amendment.

I would propose at this time, Madam Speaker, to just briefly list and explain the amendments that are contained in Bill 44 and to give the rationale for each of them. Dealing firstly with section 2(3) of Bill 44, it deals with an omitted regulation-making power, and it would propose that the existing section 16(b) of the unproclaimed Insurance Act be repealed. That existing section 16(b) gave cabinet the regulation-making authority under section 7 of the unproclaimed act to prescribe "classes of individuals for the purposes of" insurance.

The amendment would substitute a new section 16(b), which would propose to expand the regulation-making power of cabinet to include "any matter that is to be prescribed under sections 1 to 12." So instead of just section 7 it will now include sections 1 to 12, and it is specifically needed so that cabinet can make regulations

prescribing group insurance contracts for the purposes of section 1(bb)(v), and also to allow cabinet to make regulations prescribing entities for the purposes of section 1(u)(vi).

The next amendment, Madam Speaker, is under section 2(4) of Bill 44, and it would simply make a grammatical correction to section 562(3) of the unproclaimed act to impart the correct meaning to the section. It involves simply adding a comma and removing the plural from the word "consent."

The next housekeeping amendment relates to section 780(e) of the unproclaimed act, which is the offence section of the Insurance Act. The effect of this amendment, Madam Speaker, is to add five additional sections to the penalty, or offence, section of the act. Namely, those additional sections are 525(1), 535, 610(1) and (8), and 698.

The source of these additional sections is part 4 of the existing act, entitled Contracts, which was not rewritten in the new Insurance Act, and this may be the main reason why these sections were overlooked.

Why they are needed to be identified as offence sections is that under the scheme of the new Insurance Act a contravention of a section of the act needs to be identified as an offence, as compared to the existing act, where the scheme is that a contravention of any section is a potential offence. Basically all offences are identified under the new unproclaimed act.

The last amendment, Madam Speaker, adds two definitions to the existing Insurance Act and also adds these same two definitions to the unproclaimed Insurance Act. They are the definition of "spouse" and the definition of "common law relationship." They are contained in section 1 of Bill 44. These definitions are consistent with the definitions this Legislature adopted last spring during the spring session in the Domestic Relations Amendment Act, 1999. Namely, they expand the definition of "spouse" to mean not only the spouse of a married person but also a party to a common-law relationship, and they go on then to describe and define a common-law relationship as

a relationship between 2 people of the opposite sex who although not legally married to each other

- (i) have continuously cohabited in a marriage-like relationship for at least 3 years, or
- (ii) if there is a child of the relationship by birth or adoption, have cohabited in a marriage-like relationship of some permanence.

As I mentioned, Madam Speaker, these definitions respond to the Court of Queen's Bench decision of Madam Justice Veit in the case of *Gruending versus Browning Smith Inc.* Madam Justice Veit held that section 265(2) of the Alberta Insurance Act is unconstitutional because it does not give common-law spouses the equal benefit of the law under that provision. Rather than interfering with the legislative prerogative of this House, Madam Justice Veit suspended the effect of her decision for 12 months to allow government to take action, and we are doing just that.

Just to explain to the House what the problem was in this case, Mr. Gruending, who was a bankrupt, asked the court to extend to his common-law wife the same protection from bankruptcy creditors for certain investments that she would have received if they were legally married.

8:10

I would expect, Madam Speaker, that there will be similar debates on this Bill 44 as were heard in the House on the Domestic Relations Amendment Act, 1999, regarding the definition of spouse and common-law relationship, but I wish to emphasize that this amendment as contained in Bill 44 is not intended to redefine family law. It is to implement the decision of the court in the case that I have described in a timely fashion, and if we as a Legislature do not

respond to this need, then we leave those beneficiaries of policyholders such as legally married spouses, parents, and children vulnerable. They'll no longer have the protection of this section, section 265, because it will have been struck down come February 19, 2000.

Madam Speaker, those are the amendments in Bill 44 and the rationale for them, and I would on the basis of the rationale urge all members to support this bill.

THE ACTING SPEAKER: Before I recognize the leader of the ND opposition, would it be possible that I can ask for unanimous consent to revert to Introduction of Guests?

HON. MEMBERS: Agreed.

head: Introduction of Guests

THE ACTING SPEAKER: The hon. Member for Edmonton-Gold Bar.

MR. MacDONALD: Thank you, Madam Speaker. It is a pleasure to rise in the House this evening and introduce to you and through you to all Members of the Legislative Assembly 11 Guides from the Edmonton 69th Guide company and 5 Scouts from the Edmonton 70th Scout group from the constituency of Edmonton-Gold Bar. They are accompanied by their adult leaders. There are four leaders with the Guides, and I would call out their names and ask them to please rise along with the Guides and the Scouts. They are Tami Boucher, Ruth Boychuk, Bev and Peter Bagnall, Bill Andrews, and Perry Todd. They are in the members' gallery. If they would please rise and receive the warm and traditional welcome of the Assembly. Thank you.

head: Government Bills and Orders  
head: Second Reading

**Bill 44**  
**Insurance Statutes Amendment Act, 1999**  
*(continued)*

THE ACTING SPEAKER: The hon. leader of the ND opposition.

MS BARRETT: Thank you, Madam Speaker. I have no quarrel with the primary intent of this legislation. In fact, I can't help point out an irony though. This legislation is in response to a Supreme Court decision, but it implicitly fights another Supreme Court decision, that being the case of M versus H. That case determined that same-sex couples need to have the same rights and obligations under our legislation as opposite-sex couples.

Madam Speaker, you know, it's funny. When I walked in, I was wearing my coat, and the Minister of Environment said: is it cold in here? I said: no, I just got in from Shaw cable. I did this live show on the private, for-profit hospitals issue and following me was Julie Lloyd. I couldn't stay to hear her because I wanted to get here, but she is a lawyer who speaks for an organization called Equal=Alberta, and she was going to be going on the air live to make the case for enhancing legislative rights and obligations for same-sex couples. Tomorrow at the Legislature at 12:30, provided I can get back here, as I've got a lunch to attend, I'm going to get a pin that says Be Like Mike. This is going to be an historic occasion, Madam Speaker. Me, Pam of the NDP, endorsing something of the Mike Harris government. I endorsed one today earlier, when I said: hey, good for these guys; they're phasing out their old for-profit hospitals. But believe it or not, just a few weeks ago, in a matter of only three days, that government passed legislation pursuant to the M versus H case

to allow – I believe they amended 64 laws to make sure that same-sex couples are given equality of rights and obligations under those provincial statutes. And, yes, the Member for Calgary-Lougheed, for whom I have an awful lot of respect, did anticipate – oh, what a surprise – where I would be coming from tonight in this debate.

I just don't understand why the Alberta government would court the possibility, more like the probability, of having to go through successive court challenges in order to be told exactly that which the Ontario government was told. There is nothing the matter with acknowledging. I mean, for heaven's sake, this is the government that finally acknowledged the world's oldest profession in the Premier's flagship bill two years ago when he said: "Hey, young kids involved in prostitution are going to have to get the message, and we're going to legislate it. If you're underage and you're engaged in this activity" – and I believe every member of the Assembly supported the Premier's bill – "you're not going to have the right; you're going to have the possibility of being detained for up to 72 hours by police authorities so that we can get you out of this racket and trade."

Well, if they can acknowledge the world's oldest profession, for heaven's sake, don't you think it's time, Madam Speaker, that they also acknowledge that along with that historical fact was and remains the fact that we have homosexuals in our society? So what?

Now, everybody knows that I'm not a Liberal, but I was watching this interesting show on MuchMoreMusic. There's a great show on MuchMoreMusic on Sunday nights at 6:30. It's the *Ed Sullivan Show*. Remember when he used to have these rock stars on? They pointed out that the year was 1969. This is a few weeks ago. I can't remember who they had on. I think the Stones and the Supremes. They said: this was the year that the Prime Minister of the country made the famous statement that it's time to get the state out of the bedrooms in this nation.

I can't remember any further details about the show, but I thought: what a good line, and wouldn't it be nice if the Alberta government would get it? Like who cares about your sexual orientation? If you're not offending the Criminal Code, who cares? And if that's the case, then why would you build legislative fences? And, worse yet, why wouldn't you take golden opportunities like this, when legislation is needed to be amended to conform to a Supreme Court decision, to say: we could define common-law couples just the same way that we could define married couples, just the same way that we could define all kinds of couples, and say that same-sex couples are the same in our opinion, in our legislative perspective as those of the opposite sex. This legislation rules that out. I fail to understand why. I mean, it is no longer a crime to be homosexual in Canada. It hasn't been for like 35 years, and it shouldn't have been forever. But, anyway, it's no longer a crime.

We have same-sex partners living in the same apartment buildings that we might reside in or that our friends or families might reside in. What do we care? We don't belong in their bedrooms, Madam Speaker, and it's high time the Alberta government stopped representing the finest minds of the 19th century and got ready for 1999, let alone the new century. So unfortunately for this reason I must oppose the bill even though it's a good bill. It just doesn't go far enough. I see no reason for it not to go far enough.

Thank you, Madam Speaker.

THE ACTING SPEAKER: The hon. Member for Edmonton-Gold Bar.

MR. MacDONALD: Thank you, Madam Speaker. I would also like to address the House this evening regarding Bill 44, the Insurance Statutes Amendment Act, 1999. I listened to the previous speaker

and also the hon. Member for Calgary-Lougheed in her remarks this evening regarding this bill.

Certainly there are some highlights that I think we need to outline and emphasize about this legislation. It's not too long ago – it was the spring – since we talked about Bill 25, and that was an overhauling of the Insurance Act, which previously had not seen such a comprehensive legislative initiative since, I believe, the First World War.

8:20

Madam Speaker, this bill ensures that the provisions of the Insurance Act apply to common-law spousal relationships in accordance with the Supreme Court ruling in *Miron versus Trudel*. I'm going to talk a little bit about this later on, but it also clarifies the regulatory power of cabinet to prescribe the definitions of insurance agents and their involvement in enrolling persons in group insurance contracts, including an individual who is "a Canadian citizen who does not live in Canada but is a member of a prescribed class of individuals."

Bill 44 also clarifies the list of provisions that constitute an offence, to include these sections under part (5). Insurance contracts: this would include failure to furnish to an insurer the copy of the insured's application or proposal for insurance in the insured's policy of insurance.

Now, when we look at these objectives of Bill 44, the first objective of the bill – and I do not consider this in any way to be light housekeeping; this bill is certainly not what I would consider to be light housekeeping – is to include heterosexual common-law relationships within the scope of the Insurance Act. The definition of "spouse" in relation to a beneficiary has been clarified to include common-law as required by the courts in their interpretation of the Charter of Rights. Spouse, as I understand it, is defined under Bill 44 as

- (i) a spouse of a married person, and
- (ii) a party to a common law relationship.

Now, this is going to lead to more court cases, and the bill as it stands now is going to allow court challenges under section 15 of the Charter. It's going to be a considerable growth industry for Canadian courts and, as a result of that, Canadian lawyers. I don't think this bill adequately addresses the entire issue of the definition of "spouse."

A common-law relationship is defined, Madam Speaker, under Bill 44 as

- a relationship between 2 people of the opposite sex who although not legally married to each other
- (i) have continuously cohabited in a marriage-like relationship for at least 3 years, or
- (ii) if there is a child of the relationship by birth or adoption, have cohabited in a marriage-like relationship of some permanence.

Now, the amendments do not go far enough. The amendments relating to common-law relationships apply to chapter 5 insurance contracts under the 1980 Insurance Act and the unproclaimed Bill 25, Insurance Act, that was passed in the spring sitting of the Legislative Assembly.

Earlier I heard the hon. member talk about the decision that came down this past winter in the Court of Queen's Bench. This ruling has sparked calls for the Alberta government to develop a definition of spouse that applies to all provincial laws, not just the Insurance Act that exists going back to 1980 or the new one that's yet unproclaimed, Bill 25, but the definition of spouse applies to all provincial law so that there is not this constant trip to Ottawa with another court challenge to the Supreme Court. As I said before, there are a lot of industries that can grow, and we can all prosper, but this is ridiculous, that there's going to be a growth industry from

section 15 challenges in the Canadian Charter of Rights. The justice in her wisdom suspended her ruling for 12 months to allow the government to take whatever action it deems appropriate. It's fine for the hon. member to bring this forward in this bill, but there are so many statutes in this province that are also going to rely on a definition that will be current with all the interpretations of the Charter of Rights and Freedoms. This is not being done.

I think it's worth noting that the justice took the unusual step of suggesting that the Alberta government, when it did not show up to argue its case, pay some of the court costs to the successful party in this decision. This is indeed interesting, because now we see the government in Bill 44 proposing a narrow amendment to the definition of common law, common law as a relationship between two people of opposite sex. I think we need to caution the sponsor of this bill and the government about further court challenges.

There are also, Madam Speaker, a number of other technical amendments set out in Bill 44. As I understand it, there are going to be amendments so that the cabinet can now make regulations prescribing classes of individuals for the purpose of the interpretation provisions set out through sections 1 through 12. Apparently this would involve only the use of the regulatory power in describing the definition of insurance agent as

a person who, for compensation . . .

- (v) enrolls individuals in prescribed contracts of group insurance.

The definition of an individual ordinarily resident in Canada is if the individual is "a Canadian citizen who does not live in Canada but is a member of a prescribed class of individuals."

Now, with all the talk that's going on across this province right now about the initiative to add private hospitals to the tax roll through contracts with the regional health authorities – I'm a little concerned about this, and I will get into this a little later. When we think of insurance, we think of house insurance, we think of auto insurance, we think of life insurance, but even the hon. Member for Edmonton-Highlands didn't talk about health insurance, and that surprised me. I think we have to be very careful about this. The hon. Member for Calgary-Lougheed will argue that the regulation power only applies to those interpretation clauses that reference the words or descriptions in sections 1 and 7, and that regulation power under the Insurance Act is made on the basis of each part of the act. This appears to be a significant enhancement of regulatory power.

Last spring in Private Bills we decided for the future growth of the province and the insurance industry – and I certainly do hope that at some point in the not-so-distant future there is more than one downtown high-rise in Calgary and perhaps in Edmonton as well with an internationally known insurance conglomerate with their name at the top. I see this as a growth industry for the entire province, and to ensure that this happens, we have to have legislation that they will be confident with, but I don't think we should be making this legislation through regulation. We should be very, very cautious about that.

8:30

Now, we need to clarify the list of provisions that constitute an offence under the act to include situations which were mistakenly not included in Bill 25, the Insurance Act, but were included in the previous statute. These provisions include situations when an insurer furnishes to the insured a true copy of the insured's application or proposal for insurance and the insured's policy of insurance. The superintendent of insurance can approve or revoke an approval, and the insurer is not able to deliver a form that contravenes a notification from the superintendent. I think that's a better way of stating that, but all these issues need clarification.

When we think of *Miron versus Trudel*, the 1995 Supreme Court

case, the Supreme Court ruled that marital status is grounds for discrimination under section 15 of the Charter of Rights and Freedoms. I'm going to read it into the record because it's very important. I feel that the more this is read into the record, into *Hansard*, the easier it is for all hon. members to comprehend.

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Now, that is very, very important.

What happened? I think we need to have a little bit of a history lesson, Madam Speaker. The appellants in *Miron versus Trudel*, while they were not married, lived together with their children. Their family functioned as an economic unit. In 1987 he was injured while a passenger in an uninsured motor vehicle driven by an uninsured driver. After the accident he could no longer work and contribute to his family's support. He made a claim for accident benefits for loss of income and damages against an insurance policy which extended accident benefits to the spouse of the policyholder. The respondent insurer denied his claim on the grounds that he was not legally married and hence not incorporated in the policy issued by the respondent.

Now, it is interesting to note that he also claimed damages pursuant to the uninsured motorist coverage under section B of this same said policy. But the respondent in this case, Economical Mutual Insurance Company, brought a motion to determine a question of law prior to trial; namely, whether Mr. Miron was the spouse of Mme Vallaire for the purposes of section B(2). The motion judge found that for the purposes of the applicable portions of the policy, spouse meant a person who is legally married, and accordingly Miron was found not to be a spouse within the meaning of those provisions of the policy.

The decision or argument went through the Ontario Court of Appeal, and it wound up before the court in Ottawa. That is what happened in that case, and that was a section 15 argument. We also had the decision in the Court of Queen's Bench here where the government was told to perhaps review some statutes. They were given 12 months to do it, and this is what we have. Madam Speaker, in its present form I would have to say that I cannot support Bill 44. Perhaps with amendments it will be suitable, but in its present form I think we need to do a lot of work on this legislation. It does not recognize the variety of mutually supportive living arrangements chosen by many Albertans.

The Official Opposition has presented a proposal in the past that would ensure that all Albertans are treated equally under the Insurance Act and other statutes, as a matter of fact, and will avoid any future section 15 challenges. The Official Opposition does not propose to redefine the terms "spouse" or "marriage." This model could easily be adapted to apply to a large number of other provincial statutes, and that is why, hon. members, I get excited about this. I think we can save time and money down the road on expensive legal challenges that Albertans will have to finance.

On the issue of same-sex partners, we propose to recognize the right of partners to contract and to have that contract governed by the provisions of the Insurance Act.

Now, there are issues related to regulations that I personally do not believe it's in the interests of Albertans to leave in regulation, because they have to be written in law. I realize that people are going to say: well, Executive Council and regulation. I know what the argument is going to be. But if the hon. Member for Calgary-Lougheed at some time in the debate on this bill could perhaps

clarify for me some things in – I'm going to call it the new Insurance Act – Bill 25. This is section 12(1):

- A contract of insurance is deemed to have been made in Alberta if
- (a) it insures a person who is domiciled or resident in Alberta when the contract is made, or
  - (b) the subject-matter of the contract is property that is or will be located in Alberta.

I want to know specifically if that is dealing with health insurance and if at some point in the future with this legislation we are not paving the way for health management organizations from America to come into this country after the private hospitals have been introduced by this government.

Also, Madam Speaker, we'll have to go back a couple of pages in Bill 25, to section 7. I would like to know how Bill 44 is going to apply to section 7(b), "a Canadian citizen who does not live in Canada but is a member of a prescribed class of individuals."

Now, these are just some of the concerns that I do have. It is worth noting that after what happened in the courts here, in the Court of Queen's Bench, which we talked about earlier in the spring, this bill is just not a reaction, a hasty reaction. I don't believe this is a case of a bill that's in response to judicial activism, because I don't think that judicial activism is a term that we need to use. [Mr. MacDonald's speaking time expired] Madam Speaker, I am very disappointed that the bell went, because I have a few comments to make, but I will adjourn debate at this time.

Thank you.

8:40

THE ACTING SPEAKER: Having heard the motion by the hon. Member for Edmonton-Gold Bar, does the Assembly agree with the motion?

SOME HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed?

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: It's carried.

### Bill 43

#### Fiscal Responsibility Amendment Act, 1999

MR. DAY: Madam Speaker, last April the budget was tabled by this government. At that time, after consultation with experts in a variety of industries, notably certainly the oil and gas industry and the investment industry, we took the esteemed advice of those analysts from not just Alberta but in fact Canada and North America and around the world in terms of looking at our revenue projections and what we thought certain key elements would bring as far as revenue. In doing the estimations on oil and gas, it was the esteemed view of those analysts both locally and around the world that somewhere in the order of \$13.50 a barrel for west Texas intermediate is where oil would settle in for the duration of our budget year, which is basically April 1, '99, to March 31, 2000. In fact, most of the investment houses in North America chose that range, anywhere from the high \$12 area into the low \$14 and \$15 areas.

So we were pretty well on the average in terms of that particular analysis. We don't deliberately underestimate that oil and gas amount. As a matter of fact, we try to get it as precise as we possibly can. We joined the rest of the oil and gas and investment world, whether you're talking about Solomon Brothers or Lehmann Brothers. Just name any of the top investment houses internation-

ally. They all had projected that oil for the year would be about \$13.50.

Of course, it has not transpired that way, to our delight actually. In fact, along with now every major corporate entity in the oil and gas sector and in the investment community, along with all of the others, we have now of course readjusted what we thought that projection would be on the price of oil and, incidentally, on the price of natural gas. We have significantly, along with the rest of the world, moved that price upward. So we are definitely not alone in that, and we join with the best and brightest in the analytical, investment, and oil and gas industries in terms of doing the best we can to estimate that particular revenue flow.

Well, we find ourselves, of course, in a situation where the economy in Alberta is performing extremely well, even as we had anticipated it would when we took upon ourselves a number of years ago under Ralph Klein's leadership to do a number of things in this province to get our financial house in order. I won't go through the litany of all those things. It's an exciting story, but it's been told many times before. That story is for another day. I can say, though, as we look at the economic projections for the remainder of this year, we are ahead on basically every front: in terms of GDP growth, in terms of our unemployment rate. [An electronic device beeped] I know, Madam Speaker, sometimes we talk quickly, but we're riding a time warp here. That in fact is the clock that the Member for Edmonton-Gold Bar sets to keep himself from drifting off to sleep. It just went off. Now we can just keep motoring on here.

Madam Speaker, we are ahead in virtually every area in our economic projections, whether you're talking about GDP growth, unemployment rates – the lowest that we've seen them for over 20 years – the population moving into this province at rates which we haven't seen before, investment rates coming in at very aggressive and almost unheard-of rates. We are ahead in virtually every area in which you want to measure economic growth. Because of that, of course, that means we have more revenues coming in than even we could have anticipated.

Here we are at this point in time coming up to our second-quarter report, and in about a week from now, without giving out any numbers right now, we know that we will easily be putting a billion dollars towards our debt payment, easily and maybe more than that. We had projected in March and April that we would have been delighted if we could have put \$463 million towards the debt. In fact, we will double that if not triple it. We have accelerated our tax plan, the very aggressive and innovative plan which my colleagues have worked on and put together. That plan has been accelerated by a year, as you know, and the surtax, which was destined to be removed in the year 2001 – half of it, or part of it, in the year 2000 on July 1, not necessarily half. The entire amount is targeted for removal in the year 2000.

We have very aggressively increased spending in health and in education. Education alone: 150-some million dollars went towards dealing with the deficits of a number of school boards and then a per capita allotment to every school board across the province. On health I won't go into all the details of some very significant announcements that were made just this week in terms of close to \$300 million in terms of meeting the needs of a variety of particular areas in the entire health field. So there you have it, Madam Speaker. We've dealt aggressively and more so than we thought with debt, accelerated taxes, health, and education.

When we poll consistently on this question, we ask Albertans: if we have the ability to have an economic cushion beyond what we had projected, what are your priorities? We've asked that question, and they've said: pay down debt, reduce taxes, make sure you deal with the growth areas and the priority areas of health, education, and

infrastructure – and infrastructure. So in meeting with representatives from municipalities across the province throughout this last year, not just Edmonton and Calgary where the growth pressures are very significant but in fact right across the province, municipalities have said to us: you've accelerated the debt payment; you've accelerated tax reductions; you've accelerated health and education increases; what about infrastructure?

As we look at the size of the debt payment and what could be put down, we recognize we have legislation in place, just introduced, which suggests that only 25 percent of that particular cushion can be spent within the year. We're looking at everything else we're doing, and we're saying to ourselves: if we only put down the 25 percent, what would our municipal partners be saying? They come to us and say that indeed they feel that we have an infrastructure deficit, a deficit of a different order. It's not a strictly monetary one, but it's one that has monetary implications. They have asked us: is there any way that you can use this economic cushion, now that you've met all these other areas, to meet some infrastructure needs? Indeed, in consultation with them and with all of us as government MLAs we have identified that we can well afford to do something related to infrastructure.

Now, Madam Speaker, it's very clear and important to note that just because the price of oil and gas is beyond what any analysts had predicted, just because oil and gas momentarily or for some period of time hits a high level, we don't expand our program spending. We've made a commitment to Albertans that we will base our spending on need and on growth. Just because the price of oil and gas or a certain other commodity goes up, that does not mean that we're going to increase our program spending, because we know that what goes up eventually comes down.

Of course we hope that oil will stay at \$26 or \$27 or possibly \$30. That would be wonderful, but most of us can remember the days in the early 80s when people in this Assembly – and I wasn't here in the early 80s – talked about oil going to \$30, \$40, \$50, \$60. Some even talked intelligently and without being laughed at of oil hitting \$100 a barrel, and government began to plan on an annualized way to spend according to those very lofty projections. We're not falling into that particular trap. Those plans were well intended; again, everybody estimated that oil would hit those levels. Those were well-intended plans, but we can't fall into that.

What we have done in consultation with our municipal partners, with Mayor Bill Smith and his council and Mayor Al Duerr and Mayor Surkan from Red Deer, and as we go, we count the reeves and county councillors right across this province – we have listened and we have found a way in which we can advance on a onetime basis some 600 million dollars to meet over the next two to three years infrastructure needs that are weighing upon those municipalities, school boards, and regional health authorities right now. The needs are there right now.

So do we just go ahead and put even more than double or triple on the debt and ignore the infrastructure deficit, or do we listen to our partners and find a way to address that need? Indeed, we found a way to address the need. It will require the restraint and the restraining order, if I can use that, of an amendment to this particular bill. This amendment will allow the \$600 million to be advanced to our municipal partners, our education partners, and our health partners only on a onetime basis, just for infrastructure. So it's a certain amount, \$600 million, and the amendment is very clear here that it's for the fiscal year ending March 31, 2000. It's not an open book. It's to deal with a situation which we have the opportunity to deal with right now.

8:50

Madam Speaker, we're not going to fall into the federal trap of moving from 75-25 to a new plan of 50-50: 50 percent of any

economic cushion, or so-called surplus, going to debt and taxes and 50 percent going to spending. Indeed, just this week the International Monetary Fund, of all organizations, rebuked the federal government for having a 50-50 approach. They have said, in fact, that that is not the responsible way to deal with an economic surplus, and we would hope that the federal government would listen to that somewhat stinging rebuke from the International Monetary Fund, which says that a 50-50 breakdown is not the responsible way to deal with an economic surplus.

We believe we're dealing with this responsibly. We believe it's a matter of listening and taking action on what we've heard. I know that we can anticipate that we'll be hearing some things about, you know, changing legislation when it's still so fresh in the Legislature and ringing off the walls of this Chamber, but we are not embarrassed to say that we have listened and that on a onetime basis we can do this. Those who would be opposed to this, especially in this Chamber, might want to talk to Mayor Smith and his council or Mayor Duerr or any of the councillors or reeves around the province to see if they have some difficulty with this. They have greeted this particular amendment wholeheartedly. They have asked for this. They have said that this is a good way to do it and still maintain the fiscal responsibility of 75 percent of any economic cushion going to the debt and 25 percent going to spending, except this onetime \$600 million expenditure.

So it is on that basis, Madam Speaker, that I'm happy to move Bill 43 for second reading.

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

MR. SAPERS: Thanks. I don't know how many times during my 15 years working in the criminal justice field I heard people say: I'll never do it again. I tell ya. Anyway, let me just start off by congratulating the Treasurer for that presentation and saying it all with a straight face. The Fiscal Responsibility Act was a political slogan when it was brought into the Legislature. It's still a political slogan, and now it's a political slogan that the government seems to want to pretend it never, ever had.

The problem with this, Madam Speaker, is that I hardly know where to begin. The Treasurer talked about forecasting and he talked about the incredibly robust oil and gas industry in this province, and you know, it really is something to behold. We have a remarkably healthy economy in this province, and it is always amazing to me the resilience of the men and women who work particularly in the natural resources sector in this province, always finding a way to do more and to rebound.

If you look at the difference in the oil forecasting between where the government was and where we are today, you can account for about 50 percent of the error in predicting the surplus. So when the Treasurer says that many analysts around the globe were predicting west Texas crude to be trading at \$13, \$14 a barrel, he's absolutely right, and that would account for somewhere between \$800 million and \$1 billion of the surplus. But there's an excess of \$2 billion. So we have to ask ourselves: what else did the government make a mistake on? What are those things that are really in this government's purview and control that they really should have been able to be much more accurate on?

Now, what those issues are, Madam Speaker, are things like corporate income taxes, personal income taxes, gaming revenue. I notice I have the rapt attention of the Minister of Gaming one more time. You take a look at all of these other areas where the government really should have absolutely crystal clear insight, and what we find is that they were a billion dollars wrong there as well, because

we've got not an error just born of oil but one in fact that's made up of making mistakes in all of these revenue areas.

The next item that the Treasurer talked about is how the government listened to all of its partners and that that's the reason we're bringing in this bill. Well, we're bringing in this bill because there's an embarrassment of riches in this government's cupboard because it lowballed revenue so it could lowball spending, and now all of a sudden they've got to do something about it because it's gotten to be critical in many of our municipalities. It's gotten to be critical in many of our schools. It's gotten to be critical certainly in our health care system. So the government has been caught in all of its manoeuvring, and now it feels that it has to do something about it.

This \$600 million is not something that a benevolent government has pulled out of its back pocket to help address unanticipated, emerging issues. This is, in fact, spending to pay for real, critical needs now that were borne from this government's policies. It was this government that cut. It was this government that decimated many of our social programs across this province. It was this government that cut municipal grants. It was this government that made all of those cuts and then said that the cupboard was bare, even when it wasn't. That is what has brought us to the point we're at today.

I mean, this is revisionist history like I have never seen it before. Orwell would be proud. I'm surprised that in the last cabinet shuffle the Premier didn't appoint a minister of truth, because that's exactly what we're seeing. We're seeing the re-creation of recent history to try to justify actions that are being taken today.

The Treasurer talked about the need to help pay for new priorities, as though they couldn't have been identified, but let's take a look at a couple of issues. Let's take a look at the fact that this government, in order to save money, cut funding for kindergarten. That's the kind of thinking that was going on. This government, in order to save money, denied children the right to early school education. This government threatened some of the most vulnerable Albertans. They threatened AISH payments just to save money. This government wanted to invoke the notwithstanding clause to limit the claims of sterilization victims. Now, what kind of a government would do all of that to save a buck and then with some self-righteousness stand up proud and say: hey, we've got a few extra bucks, so now we're going to put it into these areas because, golly, we could never have anticipated this. Madam Speaker, it's hard to accept that at face value.

Just today in this House during question period there were a number of questions about health care, and this government is now trying again to rewrite history and is saying to blame it on Ottawa, as though Ottawa is responsible for blowing up the Calgary General hospital. Blame it on Ottawa. This government cut nearly \$1 billion out of provincial health care funding at the same time that this government raised health care premiums. Now this government wants to have Albertans forget all that. They want some kind of collective amnesia to come over the land. I can't say hoodwink anymore – can I? – and I can't say mislead. Madam Speaker, what exactly do you call that? Any advice?

This government would want Albertans, taxpaying, hardworking Albertans, to forget that it is they, this government, that led the parade, led the charge, and undermined health care, undermined public education, and caused the infrastructure crisis that our municipalities now face.

9:00

The crowning moment today in question period, while I'm on the point, Madam Speaker, was when the Premier said that cuts in health care were okay because they were almost all administrative in

nature. Almost all administrative in nature. This is the government that threw 8,000 nurses out of work and then says that they were mostly administrative cuts. This is how the government manipulates spending and manipulates revenue projections and then comes forward and says: what we're going to do is we're going to give you back a couple of bucks because, you know, we just couldn't have anticipated this. Well, that's hogwash, and I don't think that's on that list, Madam Speaker. That's just hogwash, and if it is on the list, I'll apologize now and try to think of something more pithy and precise to describe what I think about the government's plans.

Madam Speaker, let me take the House through a couple of the items where this government has missed the mark in its forecasting. Then I want to ask the question – and I hope it won't be rhetorical; I hope somebody from government will actually answer – why should we believe them, when they talk about the FR Amendment Act this time, that it's only just this once? Let's take a look at how many forecasts this government has made in error. The budget surplus, of course, that was projected was wrong by \$2 billion. Revenues were out by \$2.3 billion. Nonrenewable resource revenues were out by nearly half a billion dollars. Personal income tax was out this year by \$766 million and last year by \$351 million: a Klein government average of over half a billion dollars wrong every year on the personal income tax side. On corporate income tax they have been wrong as much as \$412 million, and the average is \$215 million.

User fees, premiums, licences: something this government is almost as addicted to as gaming revenue. User fees: we understand that there is a review going on, but it's only a partial review because they don't really want to review all the user fees, like health care premiums, that are not supportable. What they do want to do is at least say that there might be one or two, even though it's been government policy to set those fees higher than the cost of service provision. Even in those areas, Madam Speaker – and this is unbelievable to me – where the government has exclusive jurisdiction, exclusive purview, they set the user fees behind closed doors, in secret, by order in council. They set those fees, they work on those fees, and they work their budgets on those fees. Even when it comes to user fees, this year they were \$109 million wrong, an average of \$135 million when it comes to fees, premiums, and licences.

In the lottery fund this year the government was wrong by \$110 million. On total program expenses, three-quarters of a billion dollars in error this year. On all expenses they were wrong by half a billion dollars. Debt services costs were out by \$62 million. This is a very long list of mistakes. In forecasting real GDP change, they were wrong by nearly a full percentage point. Oil prices were wrong, as we know, by almost \$4 a barrel. Natural gas prices in Canadian dollars per barrel at the wellhead were wrong by 28 cents a barrel. Even in the exchange rate they were wrong. This is what's really interesting, because if you want to know just how well the Treasurer was managing all of these forecasts, the Alberta government in a list of 10, including the Bank of Montreal, the Conference Board of Canada, the Royal Bank, the CIBC, Nesbitt Burns, Wood Gundy, et cetera, has the second worst record of forecasting the exchange rate. When it comes to the gross domestic product forecast, the Alberta government has the second worst record in Canada in terms of forecast accuracy. Natural gas forecast: second worst record in Canada when it comes to forecasting.

So what we have, Madam Speaker, is either a terribly incompetent government making error after error after error or what we have is a strategy, a cynical strategy to make these "mistakes" – and I use the word "mistakes" in quotation marks – to justify policy decisions. Either way it does a disservice to Albertans, to those hardworking men and women who pay the bill for all of us.

The provincial government really has very little to be proud of when it comes to this FR Amendment Act. The spending, of course, is necessary, and if anybody dares speak against this infrastructure spending, we're going to hear a chorus coming from the government: oh, it's those Liberals; they're against filling potholes, or they're against opening up hospitals. [interjections] There, Madam Speaker; I can hear it now. I can hear it. [interjections] What's that I hear? Gee, they didn't say a thing. They must be humbled and humiliated by what it is that they're about to unleash.

Of course, nothing could be further from the truth. The Alberta Liberal opposition under the leadership of Nancy MacBeth has a track record that is a mile long and has a stack of policies that's a mile deep talking about how we would govern, the kinds of priorities we would put on social programs and infrastructure, the way that we would manage the budget. So there is absolutely no basis to any assertion that may flow from government lips that members of this opposition caucus are in any way saying that these areas where the \$600 million will go are priorities. Let's just dispense with that little bit of rhetoric right off the top because we don't want to have to waste the time of this Assembly having to refute that kind of nonsense, and we certainly don't think it's fair to taxpayers to see us taking up our time in that regard.

Now, Madam Speaker, let me make just a couple of suggestions about the kinds of things that I would've liked to have seen in terms of a fiscal responsibility amendment, and I'm still talking just in principle. We'll come, perhaps, with some amendments if we can figure out a way to rescue this particular initiative. But let me just talk for a minute about the kinds of things that should have been present in any competent, honest forecasting and budgeting process. There are a number of elements that could be implemented to improve credibility and stability of the budget and planning process. The suggestions would sustain core program funding, and they would also give Albertans a much greater degree of certainty when it comes to their expectations for taxation, et cetera.

First of all, the government should table monthly budget updates and quarterly performance reports so that Albertans know where they stand on a regular basis. That way the government couldn't get away with the kind of shell game that we see being played before us right now.

Number two, we should require an independent assessment of provincial revenues by an independent source and then compare these forecasts with those of Alberta Treasury. Now, the federal government under the leadership of Jean Chretien and the Finance minister, Paul Martin, have just gone to an outside forecasting source, and it tested their forecast against the private sector. I'd like to see this provincial government take the lead from the federal government and do the same thing. These forecasts should be tabled with the budget, and they should also be tabled with subsequent budget updates.

We would like to see the establishment of a ministry performance measure and benchmark for variance between budgeted and actual revenues similar to what has been done by the state of Minnesota, and I believe we've tabled that documentation. I know the Treasurer has it. It shouldn't be a surprise to him. I don't know why he can't convince his business partners in cabinet that this would be a worthwhile pursuit.

Number four, we'd like to require in the budget the preparation of a fiscal strategy report with 10-year trends for major fiscal and economic indicators.

Number five, we'd like to see the establishment of a fiscal stabilization fund which would ensure that the strategic investments undertaken in our health and education systems, amongst others, are sustainable over the long term, not relying on the volatility of our

economy and revenues to guide budgetary decisions or priorities, particularly on the program side. A fiscal stabilization fund would introduce greater stability and certainty in the budgeting process and would allow us to sustain our core programs. Madam Speaker, we have talked about this fiscal stabilization fund before and will continue to talk about it until one of two things happens: until there is one or until we form the government and see to it that it's put into place.

Madam Speaker, the issue of a fiscal stabilization fund is such that if we had seen such a fund, we would not be in this particular situation right now. There would be money available for in-year program spending. We would still be well ahead of schedule on the pay-down of the debt. Of course the structural deficit that the Conservative government had built into the budget would be gone and we would not have to be participating in this hoax called the Fiscal Responsibility Amendment Act, because the spending plan would have been clear. And if we had had all these other elements of accountability and of checking and double-checking and rechecking, then of course the government couldn't have gotten away with consistently making all of these errors.

9:10

Madam Speaker, the list of suggestions that the Liberals have for making the budgeting process work with more integrity and certainty doesn't simply end there. There are several other areas, and maybe at other stages of debate I can be more precise, but I can just give you a little bit of a tease, a little bit of a suggestion of what these other areas would include. Auditing and certification of annual performance reports through the office of the Auditor General, an economic and fiscal strategy report that would be tabled, the monthly budget and quarterly updates which I previously mentioned, and independent projections would all be core elements of a budget plan that we could all be proud of and that would have integrity.

This anticipated change to the Fiscal Responsibility Act will allow the government to use up to 50 percent of the economic cushion that it has built in for the fiscal year. This is to fund the so-called onetime only infrastructure program. Of that funding, \$425 million has been allocated to municipalities, and the remaining \$175 million will go to the regional health authorities and some postsecondary institutions and school boards. The government says that this is onetime only funding, onetime only spending. I'm wondering what will happen the next time. What will happen the next time that we find 14 of 17 regional health authorities in deficit? What will happen the next time when we find 60 percent of school boards in deficit? What will happen the next time, Madam Speaker, that this government gets caught with its foot in its own slogan?

Thanks, Madam Speaker.

### **Speaker's Ruling Referring to Members in Debate**

THE ACTING SPEAKER: I would just have members make reference to *Beauchesne* 484. "It is the custom in the House that no Member should refer to another [member] by name." In the case of the main party leaders, they should be referred to as Premier and as Leader of the Official Opposition.

### **Debate Continued**

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

MR. WICKMAN: Thank you, Madam Speaker. I, too, wish to make a few comments on the amendment that is before us dealing with the Fiscal Responsibility Amendment Act.

Madam Speaker, let's just back up a bit. Why Bill 43, the Fiscal Responsibility Act, in the first place? Why did the government feel that it was necessary for them to put a noose around their neck to force them to do something that most of us would take for granted? In other words, to exercise fiscal responsibility. Now, this caucus supported the bill because we looked at the track record, the performance of the Conservative government up to that point, and we realized that they had to try something.

Madam Speaker, I ask members: did Frank McKenna, the former Liberal Premier of New Brunswick, the first to eliminate a deficit, do it by using similar legislation? He did it by using common sense. The genius of the federal Treasurer: does he have to have this type of legislation to make the remark about strides that he's making now with the federal debt? No. He exercises fiscal responsibility.

[Mr. Herard in the chair]

Mr. Speaker, I look at it in its barest form, as one manages their household budget. You project that you have a certain amount of revenue coming in, and you spend accordingly. If, for whatever reason, revenues decline, you offset some of the expenditures. But, at the same time, you always keep a savings account, so when the occasion arises that you find yourself a bit short to pay some of the necessities, you can reach into that to pay.

### **Speaker's Ruling Decorum**

THE ACTING SPEAKER: Hon. member, I hesitate to interrupt you. You have the floor, but there are several other conversations going on across the aisle, and of course that's not the way it should be conducted in here. If you want to say something, please say it through the chair.

### **Debate Continued**

MR. WICKMAN: Mr. Speaker, I recall a number of years ago when I was at city hall, a young fellow coming up to me. He was doing some research for me; 18 years old and he walked into his first job in broadcasting. His first job back then – and I'm talking in the early '80s – paid him a salary equivalent to what we're making at the present time, right now as Members of the Legislative Assembly. For him, 18 years old, first job, having that type of money, he wasn't sure how to handle it. He came to me for advice, and he asked me: "How do I handle the money? What formula do I use?" I advised him. I said: "You take 25 percent right off the top, and you use it towards savings, for RRSP, savings certificates, stocks, bonds, whatever. In other words, you invest 25 percent for the future. You take another 50 percent, and you use it for fixed expenditures, like your rent, your utilities, your car payments, and another 25 percent for what I called frill money, to go out there and enjoy life and have a good time on occasion."

He didn't run off to swear in front of a notary public and get it sealed that he was going to live by this formula. He took it seriously, and he put it into practice, and now, 18 years later, whatever, it's paid huge dividends for him. He's found himself in a very fortunate position at the young age of 34, 35 years because he exercised fiscal responsibility. He went out, and he got a bit of advice, and he followed through on it. He didn't have to put a noose around his neck to force himself to demonstrate that fiscal responsibility.

Mr. Speaker, when we look at the former government and we talk in terms of fiscal responsibility and we look as to how that former government exercised fiscal responsibility, I think back to the '70s, when the dollars started coming because of the oil revenues. There



were huge surpluses. The municipalities were given a billion dollars one year because there were shameful surpluses and they didn't know what to do with those surpluses. They gave them away. They didn't set up a stabilization fund. What they did was set up a heritage trust fund and said that they would use that for a rainy day and would lock that in and keep it locked in.

I remember watching a former Premier on TV in a half-hour program putting drums of empty oil cans together – they were symbols – and talking about it going up to \$80 a barrel and the riches that were going to fall upon Alberta and how our streets were virtually going to be paved with gold. They believed that, and they spent accordingly. Billions of dollars were given to corporations to get into ventures that later on proved to be their downfall and cost the taxpayers billions and billions of dollars.

When we look back, Mr. Speaker, we have to say to ourselves: why didn't the government at that particular time set up a stabilization fund? Why didn't they anticipate that these good times that were rolling then may not necessarily roll on forever, that they couldn't count on the world price of oil going up to \$80 a barrel and set that money aside so that when the revenues started to decline, they could reach into those particular surpluses or the stabilization fund that would be created?

I can recall sitting here in the House and listening to a former Treasurer stand up and announce to thunderous applause from that side of the House how Alberta was going to achieve for the first time in years not only a balanced budget but a budget that was going to show a surplus of \$126 million. That thunderous applause that roared through the House that day started to fade as the months went on, and by the end of the year they were actually at \$2.5 billion in terms of a deficit. Mind you, that was a billion dollar improvement over the previous year but \$2.5 billion off the target. That was the way that government of that day conducted its projections.

9:20

Now we see that what happens is the complete opposite. We see a budget come down that may show a surplus of \$512 million, whatever, and what happens? We see a surplus of \$1.5 billion, \$2 billion, whatever the case may be. There seems to be some real difficulty on the part of this government in trying to pinpoint just a matter of 12 months down the road what can be anticipated, even using the averages for the world price of oil, even going to their experts to seek their advice. When was it, how many years ago that this government came within a decent level of actually meeting its projected deficit or surplus, whatever the case may be? It has been many, many, many years.

When I look back – and I think everybody in this House will admit it to themselves – it was the former Member for Edmonton-Glengarry, who was the Leader of the Opposition at the time, who introduced in this House the concept of fiscal responsibility. He laid down a platform. He introduced it; he preached it. He demonstrated it at city hall. That was what fiscal responsibility was all about. He didn't talk about having to pass legislation. He put a plan in place, a manageable plan that had a number of points that would have worked, and it would have worked very, very effectively. There is no question about that.

We see that the approach today is a totally different approach. We see the approach today where we have a government that feels they've got to force themselves to exercise fiscal responsibility by passing legislation and then in a matter of months coming forward and saying: well, it didn't exactly work out the way we planned, so now we're going to have to turn around and we're going to have to amend that legislation.

Mr. Speaker, are we going to see a repeat performance next year?

What about prior to an election? Are we going to see the government come forward and say, "Well, we're going to have to improve infrastructure; we're going to have to spend money here; we're going to have to spend money here," so again we're going to have to make another amendment? Why is this type of legislation necessary? Why can't the government simply exercise financial responsibility on a voluntary basis? Set the components in place that have to be set in place, like stabilization funds and that type of thing.

Mr. Speaker, I want to go back to March 3, 1999, when we were dealing with the Fiscal Responsibility Act. At that particular time the government defeated a number of amendments that the Liberal caucus had proposed to the Fiscal Responsibility Act. One was the defeat of the Liberal amendment to establish a fiscal stabilization fund.

MRS. SOETAERT: Imagine.

MR. WICKMAN: I can't imagine why, and up to this point they still don't talk about a fiscal stabilization fund.

The Liberal caucus also at that time introduced an amendment that was shot down that would have ensured the reporting on progress towards debt retirement being conducted by the Auditor General. Another amendment at that particular time, Mr. Speaker, was inflation-proofing the Alberta heritage savings trust fund. Lastly – and again it was shot down – the Liberal caucus proposed a penalty clause of a 20 percent pay cut for cabinet ministers when government didn't meet its debt reduction targets.

MRS. SOETAERT: How about just taking away their cars?

MR. WICKMAN: Well, that would be more than 20 percent; wouldn't it?

The Liberal caucus at that time felt that the government needed those types of nooses around its neck, because it was asking for a legislation. It was asking for something to tighten it in to force them to do what governments are elected to do and elected to do in a reasonable fashion. They couldn't trust themselves to handle the finances of this province, yet they ask the electorate to trust them to do it. When they can't do it, they come before the House and they have legislation passed to at least give the perception to the public that: "Yes, we're going to do it. We haven't been able to do it in the past, but we're going to force ourselves to do it." But has it worked? No, it hasn't worked. Already we're dealing with a situation where hundreds of millions of dollars now have to be freed to pour into areas that the money should have been set aside for when the dollars were there, when some of the cuts that took place shouldn't have taken place.

Mr. Speaker, I'm going to conclude by saying that had the Progressive Conservative governments going back whether it be the last 10 years, whether it be the last 20 years conducted themselves in a responsible fiscal manner, the province right now would be sitting debt free, would be sitting with a stabilization fund, wouldn't be sitting with the Fiscal Responsibility Act. We wouldn't be here tonight dealing with an amendment to that act, because it wouldn't be necessary.

Of all the provinces in Canada there is no province that has the opportunity that the province of Alberta does. Other provinces envy what we have. Other provinces would give their right arm to have the type of resources that we have and the other economic advantages that we have. They would just venture to have that opportunity to put into practice fiscal responsibility with those types of resources. Here we've been fortunate enough to have it given to us, and it's been blown, and it hasn't been handled properly. Billions of

dollars over the years, Mr. Speaker, have been blown, and it's unfortunate that the government still hasn't woken up to realize that they have a problem handling the taxpayers' money.

On that note, Mr. Speaker, I'm going to conclude.

MR. CLEGG: I move that we adjourn debate on Bill 43, the Fiscal Responsibility Amendment Act, 1999.

THE ACTING SPEAKER: The hon. Member for Dunvegan has moved that we adjourn debate on Bill 43, the Fiscal Responsibility Amendment Act, 1999. Having heard the motion, are you agreed?

SOME HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed?

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: Carried.

#### **Bill 41 Regulated Accounting Profession Act**

[Adjourned debate November 22: Mr. Dickson]

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

MR. SAPERS: Thanks. I'm actually in favour of this legislation, Mr. Speaker. I hear the government saying that that may force them to reconsider the bill. I do have some concerns, though, and I'll be anxious to see how these concerns are dealt with as the bill proceeds.

Bringing the three professions together under the one legislative banner and framework I think is a good idea. There are some issues that have to do with accountability, with clarity in terms of recourse if a customer or client has a concern. There are also some issues, of course, with the role of self-governing professions and the appointment process for public members. But the bottom line is that there's been a fair bit of goodwill and good effort that's been put into this bill.

[Mrs. Gordon in the chair]

In fact, I was talking to an accountant neighbour of mine who was asking me for months: is the Legislature back in session; is the Legislature back in session? He was told that this change was going to come and that he should be eagerly anticipating it. I had to keep on explaining to him that this was Alberta and that the Legislature is not going to be back in session for a while and that when it does come back into session, of course, it will be so very brief that we'll have to work exceedingly hard to get this bill passed in due course. I assured him, though, that the Liberal caucus would do everything in its power to ensure that the legislation, in fact, received passage but not without reflection and comment, because we wanted to make sure that the best thing was done, not just in service of the accounting professions but of course for all the Albertans that depend on accounting professionals.

9:30

Earlier today we were privileged to have representatives from the three major designations here in the Chamber, and I noticed that there was no end of reference to the leadership they had developed and had exhibited as this bill was brought through the stage from just the idea and consulting on the various drafts. But the one thing that

I didn't hear is a commitment from government to keep on consulting with the professions as all of the regulations are being developed. We have a very long-standing concern in this caucus about the propensity of the government to govern by regulation, about the ability of this government to really hide all the good stuff and the important stuff in a piece of legislation in the regulation section and then take it upon themselves to meet in cabinet and come up with these regulations.

I heard the Minister of Justice and Attorney General for the province just muttering that the government always consults the professions. If only that were true, Madam Speaker, because earlier today we were dealing with Bill 7, which deals with significant change to the way the doctors are treated by the government. You know, it's amazing: the AMA wasn't consulted when the government proposed that bill. So the Minister of Justice and Attorney General for the province is wrong, and I know that he'll stand up and explain his mistake. I just hope that the accountants get treated better than the medical profession was treated when this government is proposing changes.

Madam Speaker, I do look forward to the committee stage of Bill 41 because I think we will have some helpful suggestions on some of the provisions of the bill as it comes to the appointment of public members, the role of regulations, and how we can ensure the most transparency and accountability when it comes to accounting services. So with those few comments, I take my seat.

THE ACTING SPEAKER: Are you ready for the question?

The hon. minister.

MR. DUNFORD: Well, just on behalf of the Member for Calgary-North West, I'd like to move second reading.

THE ACTING SPEAKER: You have already spoken, hon. minister.

MR. DUNFORD: Have I?

THE ACTING SPEAKER: Yes.

MR. DUNFORD: Okay.

THE ACTING SPEAKER: So I will call the question.

[Motion carried; Bill 41 read a second time]

#### **Bill 40 Health Information Act**

[Adjourned debate November 18: Mr. Hancock]

THE ACTING SPEAKER: I did see the hon. Member for Edmonton-Riverview first.

MRS. SLOAN: Thank you, Madam Speaker. I am pleased this evening to rise and debate Bill 40, and I can forewarn the government caucus that this will be a vigorous debate, because I have never seen a bill in this House – actually, maybe a couple – that I have so vigorously opposed as Bill 40.

Just to start it off this evening, how would any member of this Assembly feel to know that the minister of health or the associate minister, as new as he is to governing, can access any one of our personal health records without our consent? That is what this bill gives to those two individuals: the power. I can refer you directly to the section, Mr. Minister. Let me refer you to the section "disclosure to minister or department." I'm reading from section 46.

The Minister or the Department may request another custodian to disclose individually identifying health information for any of the purposes listed in section 27 . . .

Et cetera, et cetera. It goes on.

. . . without the consent of the individual.

It's speaking only about the custodian.

Now let me go back after that interlude and talk about the definitions in this act. In part 1 the definitions start out by defining "affiliate." This is someone who will work for a custodian, who is the primary person in control of health information once this bill is passed. An affiliate can be an employee, an appointee, a volunteer, or a student, Madam Speaker, and according to section 28, an affiliate of a custodian may use health information. So they will have the ability. An employee, an appointee, a volunteer, or a student of a custodian will be able to access the information on behalf of the custodian.

Now, wait till we get to the list of the custodians of health information. It gets even worse. I'm reading from part 1 again, the very beginning of the act. A "custodian" can mean

- (i) the board of an approved hospital . . .
- (ii) the operator of a nursing home . . .
- (iii) a provincial health board . . .
- (iv) a regional health authority . . .
- (v) a community health council . . .
- (vi) a subsidiary health corporation . . .
- (vii) the Alberta Cancer Board . . .
- (viii) a board, council, committee, commission, panel or agency that is created by a custodian.

It goes on.

- (ix) a health services provider
- (x) a . . . pharmacy . . .
- (xi) a pharmacist . . .
- (xii) the Department;
- (xiii) the Minister; [or even]
- (xiv) an individual or board, council, committee, commission, panel, agency or corporation designated in the regulations as a custodian.

We might as well publish our files in the *Edmonton Journal*, Madam Speaker. I can't believe this. It is so, so invasive, and every Tom, Dick, and Harry that falls under one of these definitions out there is going to have a legal access to our private information.

This government has been called arrogant, but in my opinion after reading this bill, Madam Speaker, they believe . . .

MRS. SOETAERT: They're stupid.

MRS. SLOAN: They may just be stupid if they think Albertans are going to stand for their information to be put out there through this appointed system. It's not even elected representatives. This is the government's own appointees. The majority of people identified under the custodian definitions are appointed by this government, and they legally are going to be able to go in, in some cases without the individual's permission, and access their personal and private and confidential information. It is such an affront not only to our individual privacy, but it's an affront to our democracy, Madam Speaker. Absolutely outrageous.

Let me go on. Under the purposes of the act, we have seven sections identified. There are a number of them that are very concerning. Let me cite a couple for the purposes of debate tonight. Firstly, the purpose of the act will

enable health information to be shared and accessed, where appropriate, to provide health services and to manage the health care system.

Further, it is

to establish strong and effective mechanisms to protect the privacy of individuals with respect to their health information.

What it doesn't say, Madam Speaker, is that information in this new

plan to make sure it's shared and accessible, this government's own private initiative, which they just announced last week – the purposes of this act don't even ensure that those supposed providers, contracted, for-profit providers, would be required or covered or be participants under this act. That is not clear.

9:40

Now, if you take that section, part 2, and go to section 67(1), you find – and I'll just read that in for the record – that "a custodian may charge the fees provided for in the regulations for services provided under Part 2." So for any of those purposes we're going to have this whole list of custodians out there who are actually now going to be making money off providing health information. It will be a whole litany of user fees, Madam Speaker, to add to this government's record. Absolutely appalling.

I want to just turn now – and this is really my first analysis of the bill, so I am skipping through it – to section 27, the "use of individually identifying health information." [interjections] Let me say for the record, Madam Speaker, that I am so eager, so eager to hear the defence of this bill from the government members. I'll tell you: I will market it all over this province. You just put up there what reasons you have that can justify such an invasive bill. Let's hear your arguments.

So under section 27, "use of individually identifying health information,"

A custodian may use individually identifying health information in its custody or under its control for the following purposes:

- (a) providing health services;
- (b) determining or verifying the eligibility of an individual . . .
- (c) conducting investigations, discipline proceedings, practice reviews or inspections relating to the members of a health profession or health discipline;
- (d) conducting research . . .
- (e) providing for health services provider education;
- (f) carrying out any purpose authorized by an enactment . . .

That concludes that section.

Now, let's just contemplate for a moment 27(c), "conducting investigations, discipline proceedings, practice reviews or inspections." What this is saying is that an employer, an RHA, could in preparation or even in advance of making a complaint to a professional body review an individual's health information, their personal, private health record. To me, in any other jurisdiction, there would be mechanisms that bar an employer from going to that extent, but not in Alberta. Basically, this would allow an employer to make that invasive inquiry and to utilize that information before a professional body for disciplinary purposes.

Now, let's just consider that in another interpretation and combine it with 27(e). What if an employer wanted to screen a prospective employee's files? Maybe they just wanted to see what the record of illness was. Have they had any stress leaves lately? Do they have any contagious diseases? Maybe AIDS. This would allow employers in our province legally to review any person's personal health file before they hired them in the health sector. What does that say? What does that say about our standards in this province? Is anybody feeling embarrassed on the other side yet? I certainly would be. It is so shameful.

So I'm not sure if the government is planning to bring in some amendments to close up these areas, but that is a particular one where I can see . . . The health authorities have been fixated on reducing sick leave. You can bet that if they see there's an individual employee who is in their mind an abuser of sick time, how many of them do you think are going to use this piece of legislation to access that person's health information? Of course there will be cases, and there are absolutely no mechanisms in this bill to prevent it.

Now, I want to turn for a moment to just review "disclosure to minister or department," because that is another absolutely frightening section of this bill.

46(1) The Minister or the Department may request another custodian to disclose individually identifying health information for any of the purposes [under] section 27(2),

- (a) if the Minister or the Department, as the case may be, is authorized by an enactment . . . or
- (b) if the information . . . relates to a health service provided by the other custodian . . .

(2) If the requirements of subsection (1) are met, the custodian must disclose the information to the Minister or the Department, as the case may be.

What do you want to bet, Madam Speaker, that we would have this minister making a case that maybe some AISH recipients or some disabled citizens out there whose entitlement, in the department's view, is questioned – what do you want to wager that this minister or his department would make an application under this legislation to examine the personal health information of those AISH recipients?

MR. DICKSON: From income testing to asset testing to now health testing.

MRS. SLOAN: That's exactly right. The hon. Member for Calgary-Buffalo has said that we've gone from income testing to asset testing to now health information testing to establish someone's eligibility for coverage by this government.

There are a variety of other ways in which this could be interpreted, Madam Speaker, and I don't think any of us in this Assembly could ever begin to identify all the circumstances where a current minister or a future minister might choose to use this section. What is so troubling to me, though, is that there is nothing to compel him to justify why he's doing it. There is no disclosure of the fact that he's going to do it. It's all just done behind closed doors and in a cloak of secrecy because perhaps the minister of the day is fixated on some particular problem or disease or issue. That makes the citizens in this province not only vulnerable but really in a position where they're victims, to think that he can, without any degree of scrutiny, make that request and, which is so hilarious, then have his appointed RHAs or committees or councils seek their approval for the information.

MR. DICKSON: As if they're going to withhold it.

MRS. SLOAN: Exactly. As if they would be withholding it from their master, their appointer. Somehow it doesn't seem very logical that that would be the case.

So suffice to say that we will come back to that section, and I look forward to the other comments in debate tonight about that particular section and why it's even justifiable. I'd like to hear from the minister: why does he feel it's necessary, and under what circumstances does he want to use it? I want to hear that put on the record, and I think most Albertans would like to hear that put on the record as well.

9:50

The next section I'd like to speak to is the section with respect to disclosure for research purposes and the ethics committee, which is division 3 and covers sections 48 through to 56. Just off the top, one of the things that's very interesting is that the ethics committee, that's going to oversee the implementation and the judgments surrounding ethics in this legislation, is going to be comprised in regulation. That is hilarious if not an affront. What's wrong with

putting out for the public record and review who this government thinks would be eligible to sit on such a committee?

MR. DICKSON: Will they be privacy advocates or just medical professionals?

MRS. SLOAN: Well, who would it be? It might be biotechnical or pharmaceutical representatives. Who knows? Who do you think has got an interest in research in this province? Yes, there are many, many good researchers who are interested in research for the public good, but there are also many institutions out there who are interested in research to make a profit. We're going to have an ability, a mechanism through this bill where they are going to be able to apply to access our most intimate, personal, private health information, and we, Madam Speaker, won't be asked. The ethics committee will be asked. We don't know this evening who the ethics committee will be, who the individuals will be or what their interests will be.

MR. DICKSON: Maybe there will be many ethics committees.

MRS. SLOAN: And there will be many ethics committees over the course of this legislation's life, I'm sure. This government can't put it in writing so Albertans can review it and see whether or not the test is high enough. That's the bottom line.

So let me just review the scope of what the ethics committee could consider for proposed research under the bill.

- (a) identification, prevention or treatment of illness or disease,
- (b) scientific understanding relating to health,
- (c) promotion and protection of the health of individuals and communities,
- (d) improved delivery of health services, or
- (e) improvements in health system management.

Well, what else is there, Madam Speaker? What else is there? Everything in the whole gamut would be accessible under this legislation through the ethics committee. I don't even want to imagine what kinds of applications could possibly be put forward, and according to this, the letter of this bill, they would be acceptable legally as research projects.

The other section that I'd just like to speak to in regards to this is section 54, the agreement between custodians and researchers. This talks about how if the custodian would decide, after the ethics committee hurdle had been cleared, "to disclose health information to a researcher, the researcher must enter into an agreement."

That 20 minutes went so quickly, Madam Speaker. I'm looking forward to the further debate on the bill. Thank you.

THE ACTING SPEAKER: The hon. Minister of Health and Wellness.

MR. JONSON: Thank you, Madam Speaker. This evening I would like to follow up on the remarks that I think were well presented by the sponsor of this bill, the Member for Calgary-Lougheed. I think there is some additional commentary that should certainly be made from this side of the House.

This legislation reflects the way our health care system currently works, and it builds on the trust that Albertans have in their physicians and others who use health information in this very complex area of delivering health care. I think it's important, Madam Speaker, that this legislation also takes additional steps to make sure there are adequate safeguards in place to protect personal health information as we move into the next century.

Now, one of the areas that has had some focus is that work on this bill began back in December of 1996. At that time Albertans were

asked to respond to a discussion paper entitled *Striking the Right Balance*. This particular paper contained a whole set of questions and challenges which caused people to start thinking about the whole area of protecting personal health information. It was also, of course, designed to involve people in the whole debate on this particular issue.

One of the things, Madam Speaker, that I find has been raised as an issue and that I'd like to comment on in some detail is this issue of consultation, of examination, of discussion, of contacting all the relevant and involved people as far as health information is concerned. To start off, I would like to first of all acknowledge – although we'll certainly have some debate over this a little bit later on – that the Member for Calgary-Buffalo was involved early on in this process with respect to the steering committee. I would acknowledge that I think his very, very intense interest in this area contributed a great deal in a constructive manner to the whole process. I'm not expecting him as a member of the opposition, particularly with the advice to his left, to ultimately agree with everything we've proposed here, but I do sincerely mean that he did a lot of work here, a great deal of work, and did contribute to the activities of that particular committee.

I'd just like to outline, Madam Speaker, that in December 1996 a discussion paper on the issue of health information entitled *Striking the Right Balance* was released and widely circulated. This document brought forward the basic issues that were involved in this particular legislation. At that particular point in time we received some 63 submissions from across the province dealing with some of the issues that were raised there. Forty-seven organizations including health care organizations; community health councils; research organizations; the Official Opposition party, by the way; seniors' groups; and nonprofit organizations submitted their views. There were also members of the public that participated in their reaction at that time.

Then, Madam Speaker, going on further, from December 1996 until February 1997 there was extensive consultation with organizations across the province. Between 45 and 50 meetings were held during this time with individuals and groups, with much of this feedback being directly reflected in the draft Health Information Protection Act and the discussion papers that are involved there.

Then further on, Madam Speaker, Bill 30, the Health Information Protection Act, was tabled for public consultation in June of 1997. Of course in the true spirit of consultation we invited submissions on that bill, and a total of 60 written submissions were received on Bill 30. These submissions ranged from consumer groups to health research groups to key stakeholder groups to records management associations and members of the general public. In addition, interviews were held with key stakeholders, and in that reference I made there to stakeholder groups there were some 21 submissions, as I understand it, received.

Then, Madam Speaker, during the spring of 1998 focus group meetings or gatherings were held to understand the public reaction to this particular legislation. They were held in five locations across the province. They involved a cross section of people in the population. Also, meetings with key stakeholder groups began in early 1998 and have taken place numerous times over the past two and a half years. They've included the Alberta Medical Association, the College of Physicians and Surgeons, the College of Family Physicians, the Alberta Pharmaceutical Association, the office of the Information and Privacy Commissioner, and the council of chief executive officers of the regional health authorities.

10:00

Then we could go on a bit. In November of 1998 consumer group

meetings were held with the chair of the steering committee at that time, the Member for Calgary-Glenmore. There were meetings held with 28 groups representing various organizations, representing various health conditions, diseases and other conditions of certain kinds, justice organizations, seniors' groups, youth organizations, and consumer groups. In all, there were 28 different stakeholder groups involved in that particular process as well.

Madam Speaker, I believe there are certain fundamental things that are raised in the course of second reading debate. One just might be the issue that the members across the way have mentioned, the need and the importance of this particular legislation relative to consultation and meeting, so I just wish to address that particular principle of consultation at second reading of this particular legislation.

Then, Madam Speaker, from December of 1998 until January of 1999 the steering committee met with numerous members from the appendix group on an individual basis to receive detailed input on . . . [interjection]

THE ACTING SPEAKER: Edmonton-Riverview, the hon. Minister of Health and Wellness did not interrupt you. When you were speaking, the hon. Minister of Health and Wellness did not interrupt you. I ask that the same decorum and respect be given to him.

Go ahead, hon. minister.

MR. JONSON: Thank you, Madam Speaker. From December of 1998 until January of 1999 the steering committee met with numerous members from the appendix group, as it's called. They met to discuss the overall implications of the legislation. Then in July and August of 1999 they dealt with what is now draft 8 by this time, because remember that in all this process people were being listened to, adjustments and changes were being made. Draft 8 of the legislation was provided to key stakeholders for their technical advice. Individual meetings were held with each of these groups, organizations, over a period of two months.

In September of 1999 representatives of the ethics networks from across the province were consulted, and in October of 1999 the second set of focus tests were held in three locations: Calgary, Edmonton, and Lethbridge. In November of 1999 a technical briefing of the new legislation, Bill 40, was held with key stakeholders, including members of the official and New Democrat oppositions.

MRS. NELSON: They were at the meeting?

MR. JONSON: Oh, yes, yes. I think so. They were certainly invited.

Madam Speaker, I think the important thing here is that it's an important bill. It involves the current health care system and the future health care system being able to be positioned in terms of communicating information over the electronic network, that is becoming more and more dominant as far as all areas of communication. Certainly health care cannot be exempt from that, nor should it be, because in health detailed and timely information is extremely important. It's important, first of all, in terms of the provision of health care, but it's also extremely important in terms of being able to plan our health care system, to see what results are being achieved, to see and accurately ascertain where our successes are and where our weaknesses are.

Madam Speaker, this bill I think is the result of a very thorough, very exhaustive study of the legislation, of the need for legislation, and also the best provision, the best design for legislation. I know that members across the way may find specific issues and they may

have some good, specific suggestions when we get into study of the bill in committee, but I really think that this evening I want to emphasize two or three points.

First of all, there has been nothing surreptitious or unclear about what our intention was when we started on this particular exercise. Right up front we invited the participation of the opposition. As I said, whatever differences we may have in the debate on this bill later on, the Member for Calgary-Buffalo was, I think, a hardworking participant initially of this particular activity.

Secondly, Madam Speaker . . .

MRS. SLOAN: Quit trying to prop up your bill by using the opposition.

MR. JONSON: Pardon me. Madam Speaker, I want to make something very, very clear. I did give credit to a member of the opposition who I think did a commendable job. I'm not asking him to agree with all parts of the bill. I did not infer that at all. I certainly want to clarify that the Member for Edmonton-Riverview was not the person I was talking about.

So, Madam Speaker, there has been in the preparation of this bill a great deal of consultation. It is an important piece of legislation in terms of the modern health care system that we have in this province and that we envision being there in the future, more and more dependent upon but also, I think, benefitting from the ready availability of information that is provided in an appropriate manner

and does not violate the privacy of the individual. With a fast-moving, very much evolving health care system it is important that along with the very rapid change all across society to depend more and more upon the electronic information networks, we have in place a structure which protects personal privacy but also allows the system to use the information that's available to provide the best possible allocation of money, the best possible care, the best possible response times, the best possible research information that will help the system to continue to perform well and improve in the future.

Thank you, Madam Speaker, for your attention. We will look forward to debate in committee. I'd also like to adjourn the debate.

THE ACTING SPEAKER: Having heard the motion by the hon. Minister of Health and Wellness, does the Assembly agree with the motion to adjourn debate?

SOME HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed?

SOME HON. MEMBERS: No.

THE ACTING SPEAKER: It's carried.

[At 10:10 p.m. the Assembly adjourned to Tuesday at 1:30 p.m.]