Legislative Assembly of Alberta

Title: **Wednesday, November 24, 1999** 8:00 p.m.

Date: 99/11/24

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

THE CHAIRMAN: I call the committee to order. For the benefit for those in the gallery, we would explain this particular part of the Legislature. It's called the committee stage. It's more informal than the regular part, and we can move back from committee into Assembly and back again into committee. This is where we either go through the budgets point by point or, in this case tonight, we're going through a piece of legislation point by point.

Members are a little more relaxed. They can take their jackets off and that kind of thing. They don't have to necessarily sit in their seat, but if they're going to speak, they must be at their appointed place, which is in your program up there.

This evening, committee, we have for consideration Bill 41, Regulated Accounting Profession Act. Hon. Member for Calgary-North West, do you have any comments?

MR. MELCHIN: I do.

THE CHAIRMAN: Before we begin, we have the hon. Member for Edmonton-Rutherford. I presume you're giving me the signal that these people are yours?

So would the committee agree to the introduction of special guests?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

Edmonton-Rutherford.

head: Introduction of Guests

MR. WICKMAN: Thank you. Mr. Chairman, it's my pleasure to introduce through you to Members of the Legislative Assembly two groups this evening. The first group I'm going to introduce is the Duggan 130th Cubs. There's a total of 29 of them, if they all showed up, accompanied by three adult groups leaders: Mr. John Paton, Mr. Garry Allan, and Mr. Brent Long. If they would rise in the members' gallery and receive the warm welcome of the House.

The second group, Mr. Chairman, is 20 Girl Guides from the 183rd Girl Guide unit accompanied by six adults. They're visiting us this evening as well. I gather that they've completed a tour, as the Cubs have. The six adults with them are teachers and group leaders Mrs. Sharon Jones, Mrs. Elaine Petruk, Mrs. Arlene Hyatt, Mrs. Anita Jocksch, Mr. Christopher Johnston, and Miss Carolyn Currie. Again, if they would rise in the members' gallery and receive the warm welcome of the Legislative Assembly.

Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you.

Bill 41
Regulated Accounting Profession Act

THE CHAIRMAN: For questions, comments, or amendments we'll begin with Calgary-North West.

MR. MELCHIN: Thank you. I'd just like to respond to begin with to a number of the questions that were raised in second reading. A number of these from the various speakers are similar in nature, so I'll combine them.

The first one had to do with a number of meetings – one of the things that this act does is provide for committees, discipline and appeals tribunals to be open to the public – and why some of them aren't open to the public. The act also has an issue of trying to balance protection of privacy questions. There are a number of confidential matters in these reviews that could get into intimate personal, financial, commercial information that would not be information that should be available to the general public: tax information, potentially information with regards to their firms, and the like. As such, not all of that will be made available to the public.

Another question was with regards to the registrants not being as easily or readily accessible to the general public. Actually, all it is is a change in methodology. There is still going to be accessible through each of the three accounting bodies a list and registry of all its members. The act in sections 22 and 34 does provide for access for the public to information. It specifies even more clearly, I would say, that which can be made available to the public. For that matter, the process is just a different process. It's just as easily accessible. Now you direct to the individual accounting body versus an overall registry.

A question with regards to the Ombudsman: he can't overrule the decision of an accounting organization or a governing body. That's consistent really with the office of the Ombudsman and the Ombudsman Act. It was not there to have power to substitute their findings on behalf of the decision-makers or the professionals or organizations, but certainly the Ombudsman is put in there because of the persuasive force that he can carry both in recommendation to the organizations and certainly to the Legislative Assembly if they are not finding satisfaction through the normal channels.

There were a number of questions with regards to sanction agreements and whether those agreements would be made public. Actually, section 28(1)(d) refers to: upon written request "a copy of an agreement under section 74," 74 being the sanction agreement section – so the public, upon written request, can obtain a copy of the agreement.

Also, 74(1)(b) contemplates that the accounting organizations can under the provisions of section 96 make public a whole number, a variety of methods as to what can be and would be made available to the general public or segments of the general public, to other registrants, to clients, to former clients, to the employer, to other accounting organizations, to organizations outside Alberta that regulate accounting, or to other professional organizations. So it does specify the opportunity for disclosure and publication of decisions to the extent required by the various issues with the sanction agreement.

Also, it was mentioned that these sanction agreements can't be appealed to an appeal tribunal, yet section 74(8) does provide that

> on receipt of the agreement recommended by the panel, the complaints enquiry committee may . . .
>
> (b) reject the agreement and continue the proceedings.

So the complaints enquiry committee does have the option first of assessing if these sanction agreements are proper, and if not, then they can go through the full proceedings.

There's concern, I guess, about a lone public member being overruled by the majority of the panel who are not members of the public but are members of the profession. The requirement introducing 25 percent public participation is not meant to direct or, for that matter, take control of the accounting professional organization. It still is a self-regulating profession. It's there to be a window to the

public and not necessarily to control or rule or be the majority in decision-making but certainly to be the public representation and window.

The question was raised with regards to section 144 of the act: it seems to be an excessive delegation of regulation-making power. That section, though, is dealing with transitional provisions, not all regulation making but with transitional provisions. It says: "may make regulations . . . respecting the transition to this Act" or "to remedy any confusion, difficulty, inconsistency or impossibility resulting from the transition." It's not to be an overreaching, overriding, all regulation-making delegation of authority, but certainly in the transition and in not being able to necessarily anticipate every instance or every issue that could arise, there would be the ability to rectify those problems in the transition from one to the other.

There was a question with regards to section 8(2): why isn't this provision simply referenced to existing notice provisions?

MR. DICKSON: The *Rules of Court*.

MR. MELCHIN: The *Rules of Court*, as you've mentioned. The part of the problem that it anticipates – and it does preface 8(2)with "with the permission of the Court," and it still is under the first preference here. This is to be with permission of the court, not to take precedence over it. But there are a number of matters when an investigation gets into fraud. Part of the investigation can be with respect to records that could be changed or hidden or falsified or, for that matter, destroyed. So if you're going to investigate a party, if there's certainly the fear of fraud or the risk of loss of that information, there would be a need – and that's why the anticipation is there, to make the case. It would have to be a solid case. The court would grant permission, then, to make application without notice to the person concerned.

8:10

There is in many of these investigations a need to ensure that the public is protected too with regards to fraud and misuse of financial information. They've been given exclusive scope on areas of audit and review and become financial protectors of the public. Therefore, you have to have those powers if that risk warrants it, obviously with the permission of the court.

The last question raised was about broad-based consultation and the fear that there wouldn't be further consultation when making regulations, yet section 14 provides that the accounting organizations are to make regulation. They are the governing bodies to make such, obviously to be approved by the Lieutenant Governor in Council, but it is a responsibility in concert with those organizations to make regulation. This act has been prepared with the complete consultation of all the bodies. It has given them the stewardship to ensure that regulations are made that are necessary and are requisite, and certainly that would be the only format that would go forward.

So with those comments I look forward to any further debate.

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

MR. DICKSON: Mr. Chairman, thank you very much, and thank you to my MLA for Calgary-North West for responding so quickly and so fully to the concerns that had been raised. I don't have my checklist here, but as best I can recall, I think he's addressed each of the issues that have come up in second reading.

AN HON. MEMBER: He's your MLA?

MR. DICKSON: He is indeed.

AN HON. MEMBER: Did you vote for him in the last election?

MR. DICKSON: I plead the protection of the Canada and Alberta Evidence Act, Mr. Chairman.

The concern remains – and the Member for Calgary-North West has addressed it sort of obliquely. Already with an originating notice of motion there is the ability under the *Rules of Court* to eliminate notice, to waive notice, to do an ex parte application. I agree completely that there are occasions where there is suspected fraud, whatever, and it's important to be able to not tip off the suspected miscreant in terms of what's afoot. I mean, I understand that, but what I'm a little confused by is that we already have those provisions in the *Rules of Court* that I would think would enable the professional bodies to be able to take steps to protect the public, to be able to waive notice in appropriate cases.

The only thing that confused me a little bit is that, as I was saying the other night, it's a rule of statutory interpretation – and maybe the Deputy Government House Leader may have some perspective on this. There's a rule of construction, of interpretation that says that by putting in this power in section 8 in this act, there's a presumption that it's to mean something different than what the existing provisions are. What I'm still a bit fuzzy on is: in what respect are the rules for notice now of an originating notice of motion inadequate?

I don't have the *Rules of Court* here, and I doubt that we have them in the Chamber, but it just seems to be that there's already that provision. I'm not quite clear what this gives us extra, and if it's to do something different that's not already contemplated or enabled by the *Alberta Rules of Court*, I guess I'm just trying to understand exactly what that is.

This is not, I hasten to add, a reason to vote against the bill, but my approach to legislative scrutiny is that you want to make darn sure everything in there serves a useful purpose, and I can't believe somebody in the Justice department hasn't addressed this and thought of it. I just don't know what the answer is.

I appreciate and acknowledge getting a response, but with respect it's not completely responsive to my puzzlement. This may be something I can pursue further, but I just wanted to note on the record that this isn't providing me with complete satisfaction, that this is in there for a deliberate reason. All right. That's the observation I wanted to make. I do appreciate the speedy response of the bill sponsor, Mr. Chairman.

Thank you.

MR. MELCHIN: I'd be delighted to stand to clarify further. It's probably for the benefit of the accounting organizations as well. This is not intended to be different or supercede or change the *Rules of Court* but certainly to clarify for all the accounting organizations and their members that this is part of their responsibility. So the members are also aware that under, obviously, the standard *Rules of Court* and with permission only of the court these applications will be made so that there is the ability to properly enforce the standards and ethical conduct of its members. I think it's really more for emphasis of the membership so that they clearly acknowledge – accountants, probably not being sufficiently trained in all the *Rules of Court*, will then understand also what obligations they have.

Thank you. I conclude my remarks.

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

MRS. SLOAN: Thank you, Mr. Chairman. I'm pleased this evening

to have the opportunity to debate Bill 41, the Regulated Accounting Profession Act. Hopefully, the issues I will bring to the attention of the sponsoring member are not things that have been identified before.

I wanted to point out a couple of things that were puzzling to me. One related to changes in terms of registration or expectations under registration and accompanying expectations under practice review. My understanding is that under the current bill the standards will be established and administered by each of the respective accounting organizations rather than as currently is the practice, which is to use the Universities Co-ordinating Council.

Now, I wondered what the government's intent was or how it was proposed that they would be assured of consistency in the application of those standards. Would they be auditing the organizations to determine what standards had been achieved, or if standards were in fact not achieved to the full extent or to a satisfactory extent, how would those inconsistencies be addressed?

Again I may stand corrected, but it's my understanding that the bill also proposes changes to the practice review policy board, which seems almost to be to the contrary. What you've done with registration is that you have filtered down the responsibilities of registrations to the accounting organizations. But with practice review it's being brought into a co-ordinating body, which is just what you've eliminated from the registration side. I'm not sure what the rationale is, but as the legislation reads, you're proposing that the practice review policy board, which would be comprised of

> (a) the chair of the practice review committee of each . . . organization,
>
> (b) one member of each accounting organization,

and members of the public would "review and approve a practice review checklist developed by the accounting organizations" and "establish education and . . . qualifications to be met by reviewers." Further, the board would establish guidelines with respect to the frequency of practice reviews and guidelines respecting practice review and how that protects the public interest. So two different approaches on issues that really are intimately connected.

8:20

I've read through the sections about the discipline tribunal and appeal processes and then the incorporation of the provincial Ombudsman to be available to unsatisfied applicants, complainants, or registrants. I heard the hon. member reinforce the fact that the Ombudsman can't overrule a decision of an accounting organization. It's the governance body, a committee, et cetera.

One of the issues that concerns me about that incorporation is the fact that I haven't heard that the government is planning to expand the Ombudsman's office. No doubt the hon. member is probably aware that I've had some professional liaison and contact with that office in the last year on a couple of occasions, and the caseloads in that office are very heavy as it is, administratively and in an investigative capacity, and the diversity of issues that the Ombudsman's office investigates is actually very fascinating. But it would seem to me that what you would be looking at is having to develop a section of expertise in accounting within the Ombudsman's office. I'm not sure that the government has contemplated the cost and resources required to do that. I certainly don't think it's realistic that it would be expected that the Ombudsman would take on this responsibility given its current resources.

So unless enhancements are intended, that would be a very difficult section for me to support. There's a trend of the government doing this, where people can appeal. I know it's something in WCB, in social services, in other sectors of health care where the Ombudsman can be accessed. If you truly want to make that office a meaningful mechanism for the public, then the resources need to be dedicated to assist that office in fulfilling its responsibilities.

I'm respectful of the fact that three organizations – I believe it was three, according to my notes – have worked to build this legislation. That's a time-intensive and costly process.

Those, for the record, are the questions I have about the bill this evening, and I look forward to further debate on Bill 41. Thank you.

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

DR. MASSEY: Thank you, Mr. Chairman. I'd just like to make a few comments in support of Bill 41. One of the things that struck me about this bill and similar professional bills that have been before us is their roots in the old guild system, the guild system of the Middle Ages. As I looked through the sections of Bill 41, it became very apparent that the tradition that was established in those guilds, their reason for being, is again reflected in professional acts that have been before us, such as this one.

Those guilds, as does this act, were put in place to help control trade. In the Middle Ages of course that was a trade concerned with the work of goldsmiths and weavers. The guilds were used to regulate wages. Guilds were responsible for the quality of production of members that were part of the guilds, and very importantly they outlined the working conditions for apprentices. It was in the 16th century that those guilds fell into decline, but we see in the professional acts, such as the one before us, a very, very sophisticated version of guild practice.

As you go through the sections of the bill, you can see the effort to try to improve the professions. Those efforts are really reflected in trying to make professions more responsible for their own actions and trying to assure the public that there is some recourse should something go wrong with one of the professional practitioners and also set higher standards.

Certainly the professional organizations involved and the government deserve to be complimented for the kind of consultation and the kind of care that's gone into crafting this piece of legislation. I couldn't help but contrast the care with which it has been crafted with that of a couple of other bills we've had before us this session. It's a delight when it does come to us in this form. That's not to say that it's perfect. I think some of my colleagues have raised some concerns, but it does go a long, long way to improve the accounting profession.

If you look at the amount of space, the number of sections devoted to complaints and the inquiry process in part 5, a real attempt to make sure it's very clear how complaints will be handled, the kinds of penalties members will face should they be found guilty of offences, almost every assurance you possibly could make to the public that the accounting profession will act responsibly, and if they don't, they have been party to putting in place laws that will ensure that they do.

I only have those few comments, Mr. Chairman. As I said, I'm delighted to support Bill 41. Thank you.

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

DR. PANNU: Thank you, Mr. Chairman. In the committee stage, the study of the bill, I want to make a few observations on the bill. I want to thank the member who sponsored the bill and members of the department who invited both opposition caucuses for a briefing on the bill two or three days ago. For that, I want to thank both the department and the Member for Calgary – I'm trying to get the riding for the member. I can't at the moment get it.

The bill has some significant changes in the existing legislation, but it's primarily an attempt to consolidate three different statutes

into one, bringing into line the rules and regulations which apply to each of the three subdisciplines or groups of the accounting profession. The bill certainly is respectful of the principle of self-regulation by professions, which I think is a good thing to preserve. The more complex and technical professional practices are, the more necessary it is for society to be able to depend on the experts themselves to take on the responsibility to regulate the conduct of their own members.

8:30

A few proposed changes in the bill were brought to my attention, and as I skimmed through the bill, I noticed that they certainly appear in various sections of the bill. The disciplinary hearings are to be public except under specified circumstances; I think that's a good thing. I would hope that the bill provides for ensuring that the vast majority of the hearings are public and therefore open to public scrutiny and transparent.

I think another good feature of the bill is the increase in the public representation on the governing body and on the hearing committees. The public representation has been increased from 10 percent to 25 percent. I'm a supporter of that change.

One thing that I have some questions about and hope there will be some explanation for it: there will be no public representation anymore on the joint standards directorate. In fact, public representation has been discontinued. The reason that was given to me during the briefing was that the functions have changed, that this joint standards directorate no longer regulates and is merely an advisory body. I still think it would be a better bill if there were to be some public representation even on this relatively technical body, and I'll give my reasons in a moment.

I'm reminded of why perhaps public representation is indeed important on one of the most critical and technically oriented bodies and committees of professions. The case of the doctor who was disqualified in Canada, in British Columbia, and went back to Britain and got a licence to practise and did a great deal of harm to his patients to the point where the matter had to be brought before the Parliament of Britain, which not only admonished the physicians' organization for dereliction of duty and expelled this errant doctor for good from the right to practise but also now requires that the governing body of the physicians' organization in Britain have a majority public representation on it because of the oligarchic nature of the professional dominance of the body. This is what's precisely being blamed by the Members of Parliament in Britain for the failure of the professional body to act in time to safeguard and protect the interests of the patients of this doctor.

In light of that, I think that public representation even on the joint standards directorate would be a good idea. It would be a good safeguard. Nonprofessional public representatives can act as watchdogs and can also act as more objective observers than the actual insiders, the members of the profession themselves. So there's that concern that I have, particularly in light of what's happened in Britain in the recent weeks.

Another good feature, I think an improved feature, of the bill is the attempt in the bill to separate in the complaint/discipline process the three stages – the investigation stage, the hearing stage, and the appeal stage – in the sense that it's not the same group of people who'll be responsible for each stage of the process. Rather, different persons will be responsible for making decisions at each stage, thereby providing for an independent review of the work done at a previous, or earlier, stage.

The public Ombudsman's powers to investigate complaints have been extended now to the accounting profession through this act. That certainly raises the question of the capacity of the Ombudsman's office to address effectively these added responsibilities, that necessarily will fall within the scope of activities that the Ombudsman is often required to undertake. So I would again ask some questions. To what extent does this addition to the responsibilities of the Ombudsman also mandate some increase in the resources that would be needed in order for that office to act effectively and expeditiously on matters brought before it from the accounting profession?

One other feature, Mr. Chairman, that I think is a good addition is that the act will formally include an alternative dispute mechanism, ADM, which will be available to complainants. But there is one danger in just making this alternative available without some safeguards. Some sweetheart deals could be struck once the complaints have been made behind the scene, thereby escaping full disclosure of the misconduct, a failure to act properly. So I think the bill does in a sense provide an override, that is available to the governing body, to discourage such sweetheart deals. I would hope that the public representation on the governing body would make sure that this override is used without hesitation when conditions demand it and merit it.

The practice review policy committee has no public representation on it, and that is a concern to me, again, in light of what's happened in Britain concerning this medical practitioner who was able to return to Britain from here, and although his licence had been removed from him here and he had been suspended and debarred, he was able to go to Britain and then go into practice there. The implication seems to be, from what I read, that he was able to do this because he had some sympathetic members of a practice review policy committee, all of whom were his buddies, all physicians. So I guess public representation on the practice review policy committee would enhance both its credibility and its effectiveness.

This is a change, as a matter of fact. There was, I think, in the previous statutes provision for public representation on the practice review policy committee, but there will be none when this statute becomes law if this section of the bill remains unchanged. I have a serious concern about this. I would like to get some further explanation on it and some counterargument to the ones that are presented as to why public representation is still necessary on the practice review policy committee.

8:40

The removal of the Universities Co-ordinating Council from the scene is another issue that I had some questions about. During the briefing I was briefed as to why it's considered impractical now to have the Universities Co-ordinating Council formally represented on various bodies of the accounting profession. I think it's a good idea to make sure that the trainers of accountants, who increasingly are situated in universities in faculties of business rather than in professional bodies, examining bodies, of the accounting profession itself, are formally represented on governing bodies in order that standards for practice, standards for regulation of conduct, innovations in practices can be incorporated through the research capacity that university-based accounting professionals have because of the kind of responsibilities they have as academics to enhance the quality of practice of their trainees in terms of their existing knowledge, and since they also work at the existing boundaries of knowledge, so that new knowledge, new innovations can be brought to the attention of the profession through the presence of university representatives to the Universities Co-ordinating Council on the board.

These are some of my observations. I would like to again urge the hon. member to address some of my concerns, and I await his

response before going into detail on expressing myself on the specific sections of the act.

Thank you, Mr. Chairman.

[The clauses of Bill 41 agreed to]

[Title and preamble agreed to]

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

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

The hon. Deputy Government House Leader.

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

[Motion carried]

[Mr. Tannas in the chair]

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

MR. HERARD: Mr. Speaker, the Committee of the Whole has had under consideration certain bills. The committee reports the following: Bill 41.

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

HON. MEMBERS: Agreed.

THE DEPUTY SPEAKER: Opposed? So ordered.

head: Government Bills and Orders
head: Second Reading

Bill 40
Health Information Act

[Adjourned debate November 23: Mr. Havelock]

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

MS LEIBOVICI: Thank you, Mr. Speaker. Tonight I rise to speak to Bill 40, the Health Information Act. I would like to put on the record that this used to be the Health Information Protection Act but has subsequently been changed to delete the reference to protection, and that is one of the key concerns that we have from the side of the Official Opposition in looking at the issue of this bill.

If I can just throw out scenarios to you. How widely would anyone here want information about psychiatric treatment or attempted suicide distributed? If someone has had a severe depression or perhaps has had an HIV test, would anyone be concerned about that information being available to anyone other than a family physician? I think most people in this Assembly would sit back and say: no, that information should be private; that information is to be kept between myself and my family physician. That is of paramount concern in any dealings that I or anyone else in this province would have with regards to medical information.

The reality is that with the access to technology, with the integration of different systems of information distribution, there is no one, I believe, that can guarantee that that information is safe, secure, and will be kept confidential. There is no system available in the world that can purport to not be accessible to invasion, as it were, by individuals we may not want to have that kind of information. The reality also, Mr. Speaker, is that we need to be able to share some information in order to make good decisions relative to the delivery of health care. So the question then becomes: what is and what is not necessary to be known by everyone, what is and what is not required to be entered into a central computer system, and what can and what cannot be protected no matter what the safeguards are that are put within the system?

In fairness, I believe that the government has tried to look at some of these issues, but in the bill that we have in front of us, there are still some major areas that are lacking. If I can just provide a bit of an overview as to some of the chronology with regards to getting to where we are today in this province. As well, I may refer to some other pieces of legislation that have occurred elsewhere in the country, because we have looked at those other pieces of legislation, so they are relevant to what we are talking about this evening.

We know that as far back as February of 1992 the Supreme Court of Canada decided in McInerney versus MacDonald that a patient is entitled to examine and copy all information in her medical records but that the physical records are owned by the physician.

The physician's office medical records: the college of physicians had updated a policy in January of 1995 with regards to privacy. In December of 1996 there was a discussion paper produced by Alberta Health called Striking the Right Balance. In the spring of 1997 the federal budget included $50 million in support of development of Canadian health infrastructure, which led to in June of 1997 Bill 30, the Health Information Protection Act, which I had spoken about at the beginning of my time within the Assembly, being introduced in the Legislative Assembly.

We know that in July of 1997, only one month from the introduction of a bill to deal with health information protection, there was an IBM/Ernst & Young consortium memorandum of understanding to design information systems estimated at about $300 million. That's about 1 and a half percent of annual health spending. It could open up a lot of beds, a lot of long-term care beds within this province. This was the memorandum that kick started the process to design information systems within this province. But, you know, Mr. Speaker, we didn't have any protection at that point nor do we have protection to deal with the systems that currently have been worked on for over two years. For over two years we have had a consortium that is developing the architecture of the health information system.

8:50

So the question then becomes: which process is driving which process? Is the legislation going to be able to dictate now, $300 million later, two and a half years later, what the structure of our health information systems is going to look like? We have Wellnet. We have other information systems within the health system. We all know that. Is it going to be able to dictate the structure of those systems that are already built in, or are those systems now driving this piece of legislation? Is that why protection has been taken out, and is that why some of the aspects that we believe should be within the legislation are not there? Who is driving the process? I would like an answer to that question. I would like to know how, in fact, we can have an information system being set up at this present time without legislation to provide the safeguards.

In November of 1997 – and my colleague from Calgary-Buffalo has been very diligent on this issue and has been very involved with the whole issue of health information and freedom of information – a response was drafted to Bill 30 and published. In December 1997,

because of some of the concerns, the health information steering committee was announced. The Official Opposition introduced in January of 1998 Bill 210, the Protection of Personal Information in the Private Sector Act, which would have done exactly what this bill omits to do. Given the current controversy about the incursion of private health care into our public health care system, it is exceedingly odd that there is no mention within the information act about what happens to information for individuals who may be forced to access treatment in private facilities within this province. Who owns that information, and what are going to be the links between the providers of uninsured services and insured services if they're under the same roof, which is the direction this government seems to want to take us in?

In February of 1998 there was a national conference on health information, and it was held in Edmonton. Tom Noseworthy, who I'm sure most of the individuals within this Legislative Assembly know, stated that

> privacy is, without reservation, the number-one priority for any health info-structure of the future. Strong efforts are needed to prevent fraudulent access to health information and its fraudulent use. Moreover, the current situation with regard to privacy leaves much to be desired, and more work to improve the protection of personal health information is generally required at all levels of the health system.

In a background paper, the National Physician Workshop: On the Privacy of Health Information, from the Canadian Medical Association, they further say:

> As computerization places patient information in a form that is more useful and readily accessible to a variety of users, social and policy developments are creating new "needs" and "demands."

The issue is that patients and their physicians are being asked to invest a considerable amount of trust in people and technology to ensure that information flows only as authorized. The more readily accessible information is – and computerization makes it much more accessible – the greater the adverse consequences could be if this trust is betrayed.

Those are just some of the thoughts that have been put forward with regard to health information.

In March of 1998 the current Minister of Health and Wellness indicated to the Member for Calgary-Buffalo that there would be public hearings before a new health information bill was introduced, but unfortunately that was never done, and the steering committee report was provided in June of 1998. Again I'd like to note, Mr. Speaker, that it was the unanimous decision on behalf of that committee – and I believe it was an all-party committee – that private enterprises would be included in any new act that came forward. Again, curiously enough, it's not there; it's not in the legislation.

Well, the steering committee report came forward, and at the same time we find 500 mental health records floating in the winds in Calgary. That's the first evidence that we see that there are some problems with ensuring that people's medical records are kept safe. The Member for Calgary-Buffalo sent a dissent on July 22 to the minister, and the Canadian Medical Association in the summer of 1998 adopted a very tough privacy code. I think it's significant to note that the federal Privacy Commissioner, Mr. Phillips, observed in his last annual report that "legislators looking for guidance on health information privacy law need not re-invent the wheel."

We're not requesting, Mr. Speaker, that we go through a whole long process again, that we reinvent what has been a pretty long process in bringing health information into this province, but what we are saying is exactly what Mr. Phillips is saying:

> Legislators . . . need not re-invent the wheel; the Canadian Medical Association's Health Information Privacy Code is a comprehensive benchmark for achieving a high national level of protection for patient information. The code could be the basis for drafting [further] legislation.

In October of '98 Alberta health care bodies became subject to FOIP, and on the federal scene we saw that Bill C-54 was introduced in the House of Commons. In February of 1999 there was a national health information pathway report that also provides some guidelines for our current legislation. Again, in April of 1999 – and it's interesting that so far whenever medical documents have been found blowing in the wind, they seem to be in Calgary – we see that a nursing report with information on patients turns up in the backyard of a residence in far south Calgary.

In May of 1999 – the reason I mention this is because patients there have the option to opt out – Saskatchewan passed their Health Information Protection Act.

We see that the FOIP regulation was amended to exempt certain health information from FOIP until October 1, 2000, to allow for health information legislation being developed. That was October 1, 1999, and the last few days in this Assembly, Mr. Speaker, we have seen how that has been used to not provide information. So it's interesting how health information can be used sometimes to subvert the public interest as well, because we have been asking for information on the contracts that have been provided, and under FOIP we're told that we cannot have that particular information. In October 1999 Bill C-54 was reintroduced as Bill C-6 and passed quickly. Then just recently we've seen three boxes of confidential patient records in garbage bins behind Safeway in Calgary.

Now we have the current new-look Health Information Act in front of us this evening. The reality is that there are, as I indicated, elements that are missing. The question is: who is driving this process at this point, and is the information of patients being significantly safeguarded?

9:00

We know that we stand not alone in this fight against this particular bill. The Alberta Medical Association has had the time to look at the bill, and they, too, find that the bill does not protect the confidentiality between themselves and the patients. I find it hard to understand how a government can ignore such a key stakeholder in this process. If in fact the Alberta Medical Association, which represents the physicians in this province who enter the records, who make up the records, say that this legislation does not meet their needs, how can a government be so arrogant as to ignore what their recommendations are? It's just beyond comprehension that that could be the case.

I've just been informed – I thought I still had about 15 minutes left – that I only have about three minutes left.

I think underlying some of what we're seeing is the push for private health care. What we're seeing is a concerted effort by this government – and we've seen this over a number of years now – to put in place the provisions they need to ensure that private health care can enter this province without a hitch. I believe this is one of the ways of ensuring that: by exempting them from health information.

One of the key issues the physicians have is that the reality is that you don't need the consent of a patient in order to collect information. You don't have to take my word for that. Look on page 2 of the report that the office of the Information and Privacy Commissioner put out yesterday. In that report it says:

> The negative features I see in Bill 40 are:
>
> - It does not require the consent of the individual for the collection, use and disclosure of personal health information . . .
> - It does not apply to entities in the private sector, such as insurance companies.

Fix these, and then maybe we don't have a problem.

- There is no prohibition or legal sanction on the collection or use of the personal health number for purposes other than health care.
- The Minister may require production of health information from other custodians which he may, in turn, disclose to public health boards . . .

Now, the members across the way are saying that it's selective reading. The reality is that if the members wish to fix those issues identified by the Privacy Commissioner, then perhaps we would have less to discuss. But these are issues that are current within the current legislation. They have been identified, and they need to be addressed.

The other issue I would like to bring forward is the issue of custodian and the fact that ambulance services and firefighters – I'm sure other members will talk a little bit more about this – have been excluded. That may be able to create a problem.

Two other issues in the short time I have left. One is the issue – and I'd asked the Member for Calgary-Lougheed about this – of information on research that an individual is part of. If I am a part of a research process, I would like to know that I would have access to the records of that research that is in the process of being put forward. That is information that I should be entitled to, and I don't believe that is the case.

The other issues that I have. We've seen recently that there's an inquiry with regards to Lance Relland and whether the information that he is requesting is in fact his information, dealing with samples that were taken from his body, from his bone marrow, and whether or not he can access those samples. That has been an ongoing situation, and I don't know that this current legislation would address that. There's another current case with a Dr. Kostov, who has requested information from the Tom Baker centre with regards to the success rates on bone marrow transplants. He has been unable to obtain that information and also other bits of information – when I have more time, I can elaborate – that he and his sister have been unable to obtain. It seems very strange to me, if that information is my own personal information, that I could not have access to that.

Thank you very much. I look forward to the debate on this very crucial matter.

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Centre, followed by Edmonton-Strathcona.

MS BLAKEMAN: Thank you very much, Mr. Speaker. I am glad to be able to join into this debate on Bill 40, the Health Information Act. I do hope that this is a long, thorough, and much participated in debate, because I think this is one of the most important bills that we have seen come forward during my time in this Legislative Assembly.

One of the things I've noticed is that it does take the public a while to understand what we're doing in here, and I'm sure many of us have noticed that some of our constituents won't even know that we are in here. I think it's important that we do encourage the public to understand what's being debated, to understand what the issues are. Having *Hansard* on-line in this day and age is a great boon, I think, with people being able to sort of read along with us and come to understand some of the issues that are being brought forward that really concern them most intimately. So I do hope this a thorough debate. I would like to see every member in the Assembly up speaking on this one, but that might be wishful thinking on my part.

Privacy I think is an issue that is paramount for Albertans. There are many words spoken in this Chamber with personal opinions about what is the character of Albertans, but I think privacy is one of the key issues, one of the paramount items in the character of Albertans. I think we are a highly individualistic group, and privacy is key to our psyche. Considering the immigrant stock that we came from, one does not air one's dirty linen in public. You know, those family disputes are resolved in the family. There's a great understanding and desire to keep control over one's personal information. I think that that privacy is key to Albertans. One's ability to access personal health information that is held by others is also a priority for Albertans.

Balancing against this, perhaps sometimes pushing the envelope, is the desire to make use of the technological advances to make our lives better, safer, healthier, and to have services that can be provided in a way that is economical, efficient, and effective. Certainly I have stood in this Chamber and urged the government to make use of new technological advances or new drug therapies that are available, particularly when they can be used in a preventative mode.

So I understand the desire and perhaps even the need to be moving forward and taking advantage of the technology that is available to us to help us be healthier, but collection of personal information is a difficult subject. I think Albertans are not totally unaware that the idea of using technology for data collection or collecting data and inputting that into a technological base has been around for some time. There's quite a bit of information that is out there about us, in some cases the most intimate details and, in others, perhaps just the brand of tomato paste that we prefer to buy. Nonetheless, that information is collected, stored, analyzed, evaluated, and it's hopefully used to make things better or perhaps just to target us to sell us something specific.

9:10

Collecting information without one being told that that information is being collected is also not new, and I think we're naive not to realize that. I'll certainly admit to my shock and naivete when I first learned that the Welcome Wagon that used to be sent to people moving into a neighbourhood was a nice goodwill gesture, but it was also specifically funded by the insurance agents, who were able to then collect information on how many people were in the new household, whether they had children, what were the ages of people, were there any particular activities or occupations that people were involved in. So there was information being collected. I bet you that most of the people who opened the door to Welcome Wagon were very glad to see, you know, the extra-large size of diapers, some goodies and candies and chocolates, and two-for-one at the local pizza place that came in the Welcome Wagon basket without recognizing that personal information about that family, about who lived there, was going to be gathered and used for a purpose they were not aware of.

But we are coming to realize all of this. We are coming to understand that we can make the choice if we don't want to be involved in having our personal information collected. If we insist on being anonymous, we can take the steps to be anonymous. It's onerous, but it can be done. You know, if you don't want the world to be analyzing what kind of tomato paste you buy, then don't use the frequent-shopper cards that some of the larger grocery chains offer, which do indeed track what you're purchasing. Find a store that isn't involved with that at all, or be prepared to pay the higher rate and not get your frequent- shopper card that gives you the extra deals. That way the information can't be collected on you.

I think Albertans are not aware, with health information, how much of it is already being collected and shared and what the implications are for more information being collected and shared. We already have doctors' billings, for example, that contain codes

that stand for all kinds of things: the individual patient's gender, age, sexual orientation, financial status, sometimes even family relations. That's all encoded in the billing codes. This has been collected for some time, but I don't think many people know about it. I didn't know about it, but I have a very aware and very vigilant constituent who alerted me to this coding some time ago.

Now, this person – he or she; I'm not revealing any personal information about them - makes choices about whether they will use Alberta Health, given a particular visit to a doctor. Sometimes they decide that no, they are going to go in and pay cash. They don't give any personal information, just see the doctor and out they go. They know that those codes exist, and they don't want any more information about them put into that system. I think this person definitely understands that they don't have any control over how that information is used, who sees it, how long it is kept, and they want to control who know what about them and to make the choice about when that happens. But I don't think many people in Alberta are aware that this goes on now.

THE DEPUTY SPEAKER: A point of order, Minister of Learning.

Point of Order
Factual Accuracy

DR. OBERG: Yes. Thank you, Mr. Speaker. I rise under 23(h),(i), and (j). What is happening here is that the hon. member is saying things that are not true. When it comes to billing information that is put forward by a physician, it does not include things like sexuality. It does not include personal information when it is put through as a billing code.

MR. DICKSON: On the point of order.

THE DEPUTY SPEAKER: Yes, Calgary-Buffalo.

MR. DICKSON: Always great to have edification from a physician in the Assembly, but with respect it's clearly a matter for debate. I mean, we can have a long discussion in terms of billing codes and we'll be happy to respond to that, but unfortunately this member will have his same 20-minute opportunity to make his points. This is no appropriate base for one member to claim that he or she has a monopoly on the reality.

There is a whole range of perspectives and there is a whole range of problems around billing codes that have been well documented, and I'll be happy to share that when we get further on in debate.

THE DEPUTY SPEAKER: It seems that the minister has taken the opportunity to rise to bring a point of order under 23(h), (i), and (j), and anyone who has a copy of the Standing Orders could quickly look at it and see that nothing of the sort is to be found, in the recollection of the Speaker anyway. But I would say that there was an attempt perhaps to clarify.

Then the hon. Member for Calgary-Buffalo added to the cloud and brought on yet another item. It is true that if we want to debate what's in the things, then this may be the opportunity since it does cover billing codes, et cetera.

In the meantime I would invite the hon. Member for Edmonton-Centre to continue with her debate and would invite the minister or anyone else who wishes to clarify the record in the opportunity that will follow after Edmonton-Strathcona has his turn. So right now, in continuation, Edmonton-Centre.

Debate Continued

MS BLAKEMAN: Thank you very much, Mr. Speaker. I'm pleased as always that any humble words of mine would be engaging anyone else in this Chamber in debate, and I look forward to what the hon. member from something is going to be contributing to the debate when he gets up.

MR. DICKSON: The Minister of Learning.

MS BLAKEMAN: The Minister of Learning. Oh, right, yes. Sorry; I thought I had to say where they were from.

Now, I think the objective with health information should be first and foremost protection and, secondly, technological efficiency. That's my preference for what I think health . . . [interjections]

Speaker's Ruling
Decorum

THE DEPUTY SPEAKER: I thought the chair had made it perfectly clear that those who wish to enter into debate may do so in their turn, but having two or three debates going on at the same time is unparliamentary and difficult for those of us who wish to hear the words of Edmonton-Centre. So if we could have one person debating at a time.

AN HON. MEMBER: Quietly?

THE DEPUTY SPEAKER: Hopefully they would be quiet, yes.
Edmonton-Centre.

Debate Continued

MS BLAKEMAN: Right. Okay. To continue. Health information, yes. [interjection] I'm so sorry. All right; for the benefit of – I think the objective with health information should be first and foremost protection and, secondly, technological efficiency or innovation. I have to say that I am not seeing reassurance about that in the proposed Bill 40.

I note that Bill 30, which was the sort of previous incarnation of this, which was tabled by the government in 1997, was then entitled the Health Information Protection Act. Bill 40, as it comes forward to us, is now titled Health Information Act, period. I think that signals an emphasis, a preference for information but not for privacy, and I have some concerns about that. A number of my colleagues have raised concerns about that, and I think it's something that the public in Alberta needs to be aware of and needs to consider very carefully and thoughtfully for themselves. The bottom line, I believe, is that the protection is about people and the information is about the technology. I'm sure this will engage people in debate. Am I to take the hint that this bill, then, has a preference for the technology and information gathering over the protection of privacy issues?

As a Liberal I think first and foremost that any perceived efficiency absolutely cannot come at the expense of violating a personal privacy of any Albertan. We are beginning to understand from some of the things I mentioned earlier about collection of information about us how that information can be used and how we cannot even be aware of how it's being used, who's seeing it, for what purpose is it being used. We're not offered the opportunity to say: I don't want my information used for that. The information is just taken really without our knowledge in many cases. I note that the reading that I have done with views put forward by the Alberta Medical Association and the Canadian Medical Association also underlines that preference, that the protection be foremost and the technology come second to that, that the privacy be paramount.

9:20

Let's see what I can make work from this bill. I note that the bill

does make provision for an individual to access their health information, and I think that's a good thing. We have not always understood the need for that. We were supposed to have this right of access. It certainly was confirmed by the Supreme Court in McInerney versus MacDonald, but I think in actual practice it in many cases has been ignored or denied or frustrated, and I can think of a couple of examples that I've been given of people that attempted to get personal information and had a difficult time of it or did not succeed.

I would recommend highly that the Canadian Medical Association's suggestions be incorporated into this bill. I think now Bill 44 would allow, taken to its worst extreme, any physician or custodian of the information, as it's put, to deny an individual access by using the sort of out clause that's given claiming concern about the mental health of the patient. I really think the collection and dissemination of this information should be set up so that the onus is on the physician or the collector of the information to justify the denial rather than on the patient to justify the need for access.

This bill will also give individuals the right to request corrections to the information that's held on them. I think that's an improvement too. Certainly there are all kinds of reasons, some of them understandable, for misinformation or inaccurate information or missing information in a file, and it's important that an individual is able to look at their own file and say that this is accurate or this is not and please correct it.

But when you come down to the ownership of the health records, I believe the records should be owned by the person the information is about, not the collector of the information, whether that be an individual or an organization. I think the rights to the information should reside with the individual, and that is further to my point about knowledgeable choice that I made earlier.

I would ask the sponsor of this bill to outline and discuss what fee structures are anticipated regarding charges for individuals accessing records. I can see where a fee for photocopying a file is reasonable, but I would not accept a search fee, for instance. Right now I think one can pay $65 or something that is not minimal to Alberta Blue Cross to get a copy of the procedures that have been billed on an individual's behalf in the last year, and that's a significant amount of money to get a copy of information about what's happened to them.

There's an issue around user fees here. We know we had legislation brought forward earlier in the spring around user fees and whether they were actually a fee for the administration of providing something or whether in fact they were more than that, which makes them a tax. I think this is an issue that needs to be carefully looked at and carefully integrated into the legislation, that any fee that's charged is a minor fee, a minimal fee, for something like photocopying and does not become a fee about searching or providing the records. I want to know that that would be carefully integrated into the legislation and not left up to regulations, which, as we know, do not come back before this Chamber for debate nor have we seen the legislative Law and Regulations Committee called for some time. I think it's 11 years.

I think there's also an issue around the fee that needs to be looked at as the government seems to be in favour of moving to the private provision of care. What are the repercussions there for the individual's access to information? I would like to see a guarantee that once again either accessing the individual's file or correcting the file does not become a moneymaker or that the fee is so high as to discourage people following through on trying to access their information or to correct it.

There's a lot to discuss in this bill. I am looking forward to the other opportunities. I have other sections to come back to and talk about more, because I'm aware that my time is limited.

There is the question of there being too much power to the minister and to Alberta Health to access records that are held by doctors. I have to question why the minister, the Department of Health and Wellness, regional health authorities, provincial health boards, and the Alberta Cancer Board can request individually identifying health information from the custodians or their affiliates without the individual's consent. The reasons outlined here are for planning and resource allocation, health system management, public health surveillance, and development of health policy. Why do we need individually identifying information to develop health policy?

I think it raises some real concerns, possibilities for abuse of power. We never want to believe that would happen, and certainly I wouldn't want to believe that my colleagues here, the legislators in the Chamber, any one of them would wish to use it for nefarious reasons. Nonetheless, we would be naive to believe that people don't take advantage of that. We have all kinds of examples of that in the court system.

Given the way the wording exists now, I think it's possible to interpret that a minister of health could walk into a doctor's office and ask to see the record of any individual. This legislation, the way it's written, certainly gives them the power to do that. Individually identifying information. Even a designate of the minister, an employee of their office or someone on their staff, could be doing the same thing using the minister's name.

This information once gathered can be shared with anyone. Why do we need individually identifying information to be shared with this group of people for the purposes of health policy? [Ms Blakeman's speaking time expired] Oh, wonderful, an opportunity for the Minister of Learning to join us in debate.

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

DR. PANNU: Thank you, Mr. Speaker. I want to speak to Bill 40 in second reading. It certainly is one of the most important bills before us in this sitting. There's no doubt about it. The bill has a history. It's been around for a while, and the office of the Information and Privacy Commissioner found it necessary to intervene at an earlier stage in deliberations on this bill to express some very profound and detailed concerns about what is wrong in the bill. Until that position by the Privacy Commissioner was made public, claims were made, of course, from the government side that there's nothing wrong with the bill, that the bill is essentially a response to changing technical conditions, needs of the system of information that's necessary under modern conditions, and that concerns about privacy and confidentiality of patient information are ill advised, unnecessary, and should be dropped. Since then the bill has gone through several revisions, and I'm happy to acknowledge that some improvement in the bill has taken place in response to the concerns expressed by members of this House, by the Privacy Commissioner, and by other parties.

I want to start with the four concerns that the Privacy Commissioner has noted in the response to Bill 40 that he released on November 22, 1999. I want to return to it, because when reference was made to these concerns of the Privacy Commissioner about a half-hour ago, the Minister of Health and Wellness urged the hon. member who made this reference to not engage in selective reading. So I will certainly not engage in selective reading. I want to draw the attention of the minister explicitly to the negative features of the bill as outlined by the Privacy Commissioner. These are four, and I want to put them on record precisely.

9:30

The Privacy Commissioner says that the bill "does not require the consent of the individual for the collection, use and disclosure of personal health information in a number of situations."

Two, "it does not apply to entities in the private sector." He simply mentions, as an example, insurance companies, but there are many other private entities that are already in operation, and more will come into being, I'm sure, if this government succeeds.

Three, "there is no prohibition or legal sanction on the collection or use of the personal health number for purposes other than health care."

Four:

> The Minister may require production of health information from other custodians which he may, in turn, disclose to public health boards, the Cancer Board and regional health authorities. Custodians cannot refuse to produce this information to the Minister.

Now, he then goes on to draw attention to the mitigating features, and he draws attention to three. But what's instructive here for the minister and for all members of the Assembly to note are the words the Privacy Commissioner uses: "The negative features are mitigated to some extent." Note, Mr. Speaker, that the Privacy Commissioner doesn't say that the negative features are mitigated to a large extent. He says "to some extent." The question that raises in my mind is: to what extent are those negative features mitigated by the three factors that the Privacy Commissioner outlines?

I think it's incumbent on the minister to address this issue. Albertans are concerned about it. I'm very concerned about it. I'm not at all persuaded by what the Privacy Commissioner says, that from now on we need to feel quite relaxed and happy about the bill. I think the bill still poses some very serious questions, questions that cannot be ignored by the Privacy Commissioner's attempt to outline things that may have been improved with regard to this bill as a result of the revisions that have been undertaken by the minister and his department.

Mr. Speaker, it's also important to note that in this information age information itself is now a source of wealth. It's a commodity. As a commodity, then, it can be used by people who collect it, people who can have access to it, and governments are not immune to it. Why should we expect our government at certain stages and circumstances not be tempted to make money off the information it has access to, comprehensive access to, because it is the era of making money. This government in particular certainly doesn't apologize for doing it, for wanting to do it, you know, if it can justify it. There's no reason to believe – it's not a question of accusing a particular minister in that particular position now. We are talking about the position that exists in a modern government such as ours. The minister will certainly be under pressures, institutional pressures, system pressures, to maximize the use of the information, including generation of revenues from this.

One interesting little example of this: a person about whom the information is collected, to whom the information belongs, has certainly the right to access the information, but in order to do that, that person will have to pay fees. Now, here is one source. What fees? If the information becomes, in a sense, the property of the minister of the government of the day and I as a former patient or a person whose information is part of that pool want to access it, I will have to pay fees. What assurance is there that the fees I'll be asked to pay won't be prohibitive for many people to access that information?

[Mr. Herard in the chair]

So I'm drawing his attention to just one small possibility, and there will be multiple other similar possibilities that are imbedded in this act that must be addressed to assure Albertans that the minister or anyone else who is responsible in the government will not abuse the service or misuse this information for the purpose of generating revenues.

The other thing, Mr. Speaker, about this bill is that this commitment to serving the needs of the system – and it seems to me at considerable potential expense for individuals as citizens, as patients – is likely to have some other negative consequences. Unless we as those who use medical services, as individuals, as families, can be assured about the complete confidentiality of the information we provide to medical practitioners and the protection of privacy, watertight guarantees for that protection of privacy, we will be reluctant as patients to disclose information that's absolutely necessary for our physicians to have for our own good. There's no reason whatsoever to assume that if I knew there was a possibility that the information I'm giving about my own body, about my family's medical history, whether it's psychiatric, clinical, physical, whatever it is – if that information might get into other hands in ways that may be detrimental to my own sense of dignity, sense of respect, sense of integrity, I would be reluctant to offer that information to the doctor.

I just want to remind my colleagues in the Legislature that the two professions historically that have been considered as dealing with the sacred have been the profession of the priesthood and the profession of medicine, the profession of the priesthood because there is that unique relationship between you and your God, and the priest is in a sense the mediator of that relationship. Your salvation in many ways was very much dependent on your ability to confide in your minister or priest to save you from damnation or hell or whatever, depending upon the beliefs of the time. So the minister was always able to seek confession, a surrendering of information that we would not surrender to anyone else, because it was almost a matter of life and death.

The second profession that dealt with the sacred was physicians themselves, because they dealt with life, life as sacred. Therefore, the relationship was enclosed within this notion of complete and total trust and confidentiality. It's a fiduciary relationship. You put your trust, your life in the hands of your physician, your interest in the hands of your physician. Therefore, confidentiality and the ability of the doctor to respect your privacy were absolutely essential to the integrity of that relationship.

The functional requirement that this relationship would work would require that there are watertight guarantees that the privacy and confidentiality of this information will never be violated. I don't see that any serious attention has been paid in this bill to the very sacred nature of this relationship and the sacred nature of the activity that physicians engage in and the obligation that patients have as they walk into the physicians' offices to disclose all the information the physician requests in order for the physician to be able to be helpful. That's another matter that I think needs our attention. I think to construct a system of information and information processing for the purpose of secondary use could lead to undermining the conditions under which the patient/physician relationship can function as a healthy relationship. So that's another important concern that I have here, Mr. Speaker, about this bill.

9:40

Now let me come to the third crucial issue that I think we must discuss and discuss explicitly and honestly. Bill 40 has about the same length of life to this point as Bill 37, maybe a little bit of a gap there. With the announcement by the Premier on November 16 of his plans to proceed with legalizing private, for-profit hospitals,

these bills cannot be looked at in isolation from each other. I think it is our obligation as MLAs, it's my obligation as an MLA to make sure I address the question of the connection between Bill 37 and Bill 40. That's where I think the Privacy Commissioner's second negative point becomes fully operational, that this bill "does not apply to entities in the private sector." The private-sector entities include day surgery clinics and will include perhaps private, for-profit legalized hospitals if this government gets its way.

So Bill 40, in my view, is a bill that's a companion bill to Bill 37 to create conditions for private, for-profit hospitals to establish their businesses in the province. This bill is a guarantor of the fact that these private entities will not be held to the same obligations as public entities in this province, and that I take a very serious objection to, a most fundamental objection to. I don't think we can allow Bill 40 to be considered just in isolation from Bill 37 and let it go through while it still would want to exclude the private sector from coverage under its provisions.

The disclosure section of the bill, Mr. Speaker, causes considerable concern to anyone who gives it a serious reading: part 5 of the bill, Disclosure of Health Information. There are again, as the Privacy Commissioner has rightly drawn our attention to, several circumstances or conditions under which medical information about patients, about Albertans can be disclosed regardless of their consent and, in fact, without having to ask for their consent. This certainly is a matter that Albertans would be deeply concerned about and that I think all of us as Albertans should also be concerned about.

I would want to, Mr. Speaker, repeat a caveat here. We all should be very careful in becoming totally subservient to the needs of a system that we are trying to create. We must maintain some degree of independence and distance from the system. Otherwise, the system can devour us; the system can become the master. I urge, therefore, all of us to pay some attention to the degree to which we want to compromise the conditions under which our privacy and our confidentiality can be or should perhaps be compromised. I think we need to be extremely, extremely careful about it.

On page 29 under part 5, Disclosure of Health Information, I just want to read into the record section 36, Disclosure of Registration Information.

> A custodian may disclose individually identifying registration information without the consent of the individual who is the subject of the information.
>
> (a) for any of the purposes for which diagnostic, treatment and care information may be disclosed under section 35(1) or (4),
>
> (b) to any person for the purpose of collecting or processing a fine or debt owing by the individual to the Government of Alberta or to a custodian.

You can see here that the private information can be disclosed without the consent. It is the medical information, not information about our finances. Our medical information can be disclosed without our consent simply for financial reasons, economic reasons. Just because someone hasn't paid the bill, the collection agency will be disclosed the information so they can get after this person. I think this is unacceptable. It should never be allowed. It should never happen.

The third element here, Mr. Speaker, is that this information can be again disclosed without consent

> (c) to a person who is not a custodian if the disclosure is in accordance with the requirements set out in the regulations.

Again, it gives enormous powers to the minister to change the conditions under which this information that we surrender to our physician in confidence, in trust can be disclosed by the minister depending upon whether the minister considers it to be in the interest of the system that has been created rather than in the interest of the citizen or the person who in fact is the owner of the information.

[The Deputy Speaker in the chair]

With these comments, Mr. Speaker, I would like to close quickly. I have drawn attention only to a few of the I think potential perils that I find inherent in this bill. This bill is not ready to go ahead, and I would find it very difficult to support it in its present form or condition.

Thank you, Mr. Speaker.

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

MR. GIBBONS: As I rise to speak tonight on Bill 40, the Health Information Act, I want to point out a few things. While it has some good points, there are some that are very serious. The bill allows disclosure of individually identifiable health care information without consent for far too many reasons, including policy and management purposes. The bill gives far too many powers to the minister and Alberta health to access records held by the doctors. Even where consent is required, the range of permitted use for individually identifiable health care information is far too wide.

The public hasn't had an opportunity for input into this bill, and we must delay this bill until we've heard from the actual citizens of Alberta. Has the government gone out and tried to listen, to understand, to have town hall meetings? Have they gone out and met with anybody outside their own little circles on this particular item? I don't believe they have.

Despite the fact that they were consulted on Bill 40, the Alberta Medical Association is concerned about the contents of this bill. They believe that the bill will damage the relationship between the doctor, for example the general practitioner, and the patient. The AMA intends to compare Bill 40 with the Canadian Medical Association's privacy code of 1998. The Canadian Medical Association code was produced by the physicians to protect the privacy of patients and integrity of therapeutic relations. Bill 40 does not meet several of the important criteria.

As I was going through this, Mr. Speaker, we need to be aware that the collection and sharing of data becomes much easier. The introduction of Alberta Wellnet can be a great benefit in speeding up the identification of problems. However, this dissemination of information means that many people could have access to information that we would rather limit to our own medical practitioners.

It is important to note the distinction between privacy and confidentiality. It is important to consider the distinction between authorized and unauthorized use of information. Again, Bill 40 is supposed to deal with both. There are considerable problems with the authorized use of information. We do not know if the bill would prevent the unauthorized release of information, and this can be very disconcerting for Albertans, for normal citizens, as to what's happening.

9:50

The scope of Bill 40 is too limited. Health privacy legislation should apply to all individuals, groups, organizations that collect such information. Bill 40 does not apply to all groups that collect information, as can be seen through sections of the bill. Approximately one million Albertans eligible for workers' compensation benefits are one of those groups, as are the RCMP, Canadian forces personnel in Alberta, the Alberta Alcohol and Drug Abuse Commission, and those who deal with persons with developmental disabilities. Bill 40 puts too much emphasis on sharing information and too little on protection of privacy.

While Bill 40 lists its purposes, it does not have a list of princi-

ples. It would have been valuable to set out principles with which this bill should comply, as is done in the preambles of other provinces. An example is the Saskatchewan Health Information Protection Act.

The individual's rights to access the individual's health information is a very major concern. The Canadian Medical Association code states that patients have the right to access their information. They are also quite clear on transparency and openness. In order to protect the patient's right to privacy, information should readily be available to the patient concerning the names of persons accountable for policies of whom complaints have been made, how the patients gain access to their own information, the type of health information held, risks pertaining to the security of health information.

Health records are owned by the individual or organization that collects and keeps them. They are not personal property, even though they contain personal information about us. Bill 40 imposes some restrictions on patients' access to information. Disclosure of information can be refused if it could be expected to result in immediate harm to the applicant's mental or physical health or safety, threaten the mental and physical health or safety of other individuals, pose a threat to public safety, lead to identification of another person who provides information in confidentiality, or a wide range of other reasons. However, the damaging information can be severed, and the individual can have access to the remainder of the record.

The information contained in records shouldn't belong to the individual. As I mentioned before, as it stands, any physician who does not want to release information can claim that they're concerned about the mental health of the patient. However, these decisions can be appealed to the commission.

Mr. Speaker, as I perused this bill, I was concerned about certain points, one being the disclosure of health information. This is where the greatest problem arises, and the Canadian Medical Association principles on the rights of privacy are helpful to members. The patient has the right to determine with whom information be shared. There are many cases in Bill 40 where the rights of privacy can be overruled. The government tries to sound responsible by saying that although the act allows for disclosure under the conditions, a custodian will consider the express wishes of the individual as an important factor before information is disclosed. However, that will not prevent them from releasing the information. They just have to consider it together with any other factors that the custodian considers relevant.

Of particular concern is the fact that a custodian may disclose individually identifying diagnostic, treatment, and care information without consent of the individual who is the subject of the information, to a committee carrying out qualified insurance activities, to an officer of the Legislature, or to a health profession body carrying out an investigation, disciplinary proceeding, practice review, and inspection. Surely one should usually expect a custodian to obtain the patient's consent in these cases.

Another important point. Only custodians and persons authorized by the regulations are entitled to request an individual personal health number. Should we question why there are not more restrictions on handing individually identifiable information to the Provincial Archives or other archives covered by this bill or FOIP? We understand that it is such an important issue that the Ethics Commissioner has got involved. Although the receiving institution is covered in the privacy legislation, this is still the sharing of information. Should there not be a requirement that a specified period has elapsed or that the initial custodian has died or ceased to operate before the records are handed over?

Bill 40 even allows the Minister of the Department of Health and Wellness to disclose to the public individually identifying diagnostic treatment or care information without the consent of another minister. This is a major, major concern. The Alberta Medical Association strongly objects to the fact that the minister or anyone in the Department of Health and Wellness would have access and be able to pass the information on to other ministers. Why should it be necessary to disclose individually identifiable health information to ministers to enable them to carry out their duties? Surely in such cases one could normally obtain consent. This really does seem to be a case of Big Brother watching over us.

Does it mean that the minister of health could walk into a doctor's office and demand to see the individual records of any person, maybe the records of an opposition MLA without the consent of the MLA? [interjection] Yes, there's a minister over there that wants to speak out of turn, Mr. Speaker. Maybe he wants to get up and debate.

Does this mean that the minister can disclose the information on the member? There is nothing to prevent it being shared with the whole cabinet as maybe other things are brought out. Why should the individually identifying health data be needed to develop public policy? Does it mean that anyone from the department could access records from a general practitioner's office and hand them over to the RHAs, provincial health boards, the Alberta Cancer Board? The bill does not even limit which employees of the Department of Health and Wellness can access the information.

The intrusion on the general practitioner/patient relationship is new. In the past only hospital records were accessible to others. What effects will it have on individuals' willingness to speak frankly with their doctors? What guarantee is there that the ethics committee will have the privacy of the individual as their prime concern? Who will sit on the committee? It seems the composition and work of this committee is being left to regulations.

Mr. Speaker, in conclusion, Bill 40 is more concerned with providing access to information than it is with protecting privacy. There are far too many situations where information can be disclosed without an individual's consent. The bill does not meet the Canadian Medical Association privacy code and will end the confidential relationship between the patient and the general practitioner.

Thank you, Mr. Speaker. I move that we adjourn debate.

THE DEPUTY SPEAKER: The hon. Member for Edmonton-Manning has moved that we adjourn debate on Bill 40. All those in support of this motion, please say aye.

SOME HON. MEMBERS: Aye.

THE DEPUTY SPEAKER: Those opposed, please say no.

SOME HON. MEMBERS: No.

THE DEPUTY SPEAKER: Carried.

Speaker's Ruling
Speaking Time

THE DEPUTY SPEAKER: Before we entertain an adjournment, last evening the Deputy Government House Leader expressed his concern to the chair that the chair had permitted Edmonton-Norwood to speak longer than the allotted time. The chair indicated to the Deputy Government House Leader in the encounter, which occurred outside the Chamber, that the chair's record of debate time did not show that the member had gone over time, however mentioned that the official clock was indeed at the table and that I had not been notified by them. Subsequent to the objection I checked with the

table officers, who confirmed that the hon. Member for Edmonton-Norwood had not exceeded her time and therefore they had not sent me a signal.

It would be helpful if points of order of this nature were raised here in the House rather than in encounters outside the Chamber.

MR. HAVELOCK: Well, I might have another point of order, but I won't even bother raising it after that, Mr. Speaker.

[At 10:01 p.m. the Assembly adjourned to Thursday at 1:30 p.m.]