Legislative Assembly of Alberta

Title: **Monday, November 27, 2000 8:00 p.m.**
Date: 00/11/27

head: Government Bills and Orders
head: Committee of the Whole
[Mrs. Gordon in the chair]

THE DEPUTY CHAIRMAN: We'll reconvene the committee. I'll call the committee to order.

Bill 29
Protection of Children Involved in Prostitution Amendment Act, 2000

THE DEPUTY CHAIRMAN: We are dealing with amendment A4 The hon. Member for Calgary-Buffalo.

MR. DICKSON: Madam Chairman, thank you very much. Just before we broke at 5:30, we had the benefit of hearing the Minister of Children's Services following the Member for Calgary-McCall in explaining why they thought amendment A4 didn't warrant support at this time. Now, as I understood the two members – and I'm sure they can clarify if I misheard. I heard the Member for Calgary-McCall say that this is the subject of a review now, that we're reviewing specifically what should be done with respect to the Children's Advocate office, what kinds of changes or modifications ought to apply to that office. The question was: why would we go and add this responsibility onto the mandate of the Children's Advocate while that study was under way? Then the Minister of Children's Services got up and said that this was something that would be looked at in the future and so on but that there would be no government support for the amendment at this time.

I don't have the Blues, so I don't presume that my memory has captured everything that those two members said in opposing the amendment. But I just would say this. The government may make all kinds of changes to the Children's Advocate office. They may shrink the mandate; they may expand the mandate. But there would be absolutely nothing that would prevent us as a sovereign Legislature tonight from expanding the jurisdiction in this respect.

All of the submissions that I'm aware of that went into the Children's Advocate review talk about an expansion of jurisdiction. I'm not sure I heard very many groups calling for a contraction, a reduction, a diminution in the range of things that the Children's Advocate could do.

There's a vigorous debate about whether the Children's Advocate office should be independent, like one of the other legislative officers, like the Ethics Commissioner or the Auditor General or the Information and Privacy Commissioner or the Chief Electoral Officer. I believe that that person should be independent in that fashion and accountable to the Legislative Assembly rather than to a minister of the Crown. But how could that in any way be adversely affected by making this change?

You know something, Madam Chairman? If as a consequence of the government's review they decide to do something different with the Children's Advocate office, it certainly will not be the first time or the only time that we've seen consequential amendments that would change other things. So all we're saying at this point, knowing what we know – I think of the report my colleague from Edmonton-Riverview presented not so long ago, Lost Promise and Potential, talking about a review of fatal inquiry reports involving children in care.

Madam Chairman, there's a huge and compelling need for a Children's Advocate that is independent, that can do own-motion investigations, that's not restricted to dealing with children in care, who can deal with children at risk wherever they are in this province.

You know, do we have to be paralyzed? Do we have to deal with inertia because we don't have the wherewithal to make changes that strike us as appropriate today? I don't think so, and I find the argument, as I've heard the other arguments, put forward by the Minister of Children's Services not only not compelling but not sort of persuasive in any respect.

Madam Chairman, I think there's got to be some better reason than simply the fact that there's a review of an office. I think there's no good reason why we couldn't start this reporting immediately. The point would be, as I had said before the dinner adjournment, that there's an educative element to this amendment. That's part of what we do. We don't just make laws of coercive power, coercive authority. There's also a leadership role, an educative role. That's one of the advantages in these kinds of reports when they come forward: they inform public debate; they encourage public scrutiny. Those are positive things, surely; are they not? They're positive things.

In any event, I'm not sure what else I can say to this other than looping back again to that Catch Them before They Fall conference. My colleague who has been our social services critic may have some comment on that and perhaps other aspects of the amendment as well, but it just struck me that those of us who were at that conference heard really strong arguments about how useful this role is and how much more effective it could be for protecting children. I'd hope that that would be perhaps a primary responsibility for every one of us in this Chamber in terms of protecting children.

I'm going to defer to others who may wish to speak but just register again my sense of disappointment and I guess say, as well, that when the protection of children involved in prostitution bill came forward, there were certainly many who said: you know, much of this could be done in the Child Welfare Act. Judge Jordan said that much of this could be done in the Child Welfare Act. But the path the Legislature chose was to hive off this niche area and develop a specific bill to deal with it. I think that if we're going to go down that road, then it means that to be consistent, we build in the protection to deal with that hived-off, segregated specific element.

So if we choose not to simply deal with amendments to the Child Welfare Act but to create a brand-new statute, then surely it's incumbent on us to build in corresponding safeguards and checks and balances and reporting mechanisms. In some respects you have the worst of all worlds. You're going down a sort of uncharted road, and you've forgone the kinds of reviews that are provided by the Child Welfare Act, specifically section 2.1.

One of the other things I might say is that if the minister feels constrained because there's a review going on with the Children's Advocate, I wanted to challenge her to tell me: who else should exercise this responsibility to oversee this important area? If she thinks it shouldn't be the Children's Advocate, tell us who it would be. Would it be the Ombudsman? What other officer would do this function? I just find that we're left with a most unsatisfactory situation.

I think I've made the points I wanted to with respect to the amendment that's before us. I think that people who follow the *Hansard* debate will form their own judgment in terms of the merit or lack of same of any of the proposed changes. I suppose, also, that people who review the *Hansard* transcript will have to test and assess and analyze the response that we've heard from the government to these amendments, and we'll see what sorts of judgments

people come to on the basis of the strength of the arguments they've heard.

In any event, I look forward to further debate on the amendment before us, A4. Thank you very much, Madam Chairman.

8:10

THE DEPUTY CHAIRMAN: Before we proceed, can I ask for unanimous consent to revert to Introduction of Guests?

[Unanimous consent granted]

THE DEPUTY CHAIRMAN: Go ahead, Edmonton-Manning.

head: Introduction of Guests

MR. GIBBONS: Thank you, Madam Chairman. I'd like to introduce to you and through you to the Members of the Legislative Assembly 17 visitors tonight, two of them being teachers and the rest being English as a Second Language students. They're new immigrants. Most of them have been in Canada for less than six months. They're in the process of completing or have just completed their postdoctoral work. They're in the public gallery. The two teachers are Mrs. Janet Kan and Ms June Fong. With your permission I'll have them stand and have everybody welcome them here tonight.

THE DEPUTY CHAIRMAN: Thank you, Edmonton-Manning.

Bill 29
Protection of Children Involved in Prostitution Amendment Act, 2000
(continued)

THE DEPUTY CHAIRMAN: Edmonton-Riverview.

MRS. SLOAN: Thank you, Madam Chairman. Well, despite being somewhat under the weather with the flu and a cold, I have to say this evening that I'm really rebounding, because the report of a strong Liberal majority across this country just does my heart proud. It gives me a great deal of passion and energy to talk about another topic that's very close to my heart, and that is the treatment of children in Alberta and the government's treatment of them.

Early on in my tenure as social services critic I made a trip to Calgary and actually spent an evening and early part of the morning with a mobile unit operated by Wood's Homes in downtown Calgary. Its primary purpose was to build relationships with young women who were on the street working in prostitution and to try and encourage those young women to leave that and reintegrate themselves either into school or some other type of employment.

I found it a fascinating experience. I found many of these young women were bright, articulate. Many of them were educated. A couple of them had children at home. They were doing this, Madam Chairman, because it was a very lucrative form of employment. They were making a lot of money, far, far more money than they could have if they had been working at a minimum wage job. Many of them had cars that were paid for. They owned condos or had condos which they had made substantive down payments on.

The reality of their lives was: well, should I take a minimum wage job at the substandard rate that it is in Alberta, or should I resort to something where I can really actually make an income and make a decent living? And they chose that.

I had a great deal of admiration for the workers in this mobile unit. Over the course of time and going out night after night, they were building relationships with these young women and attempting to slowly but surely influence them to look at the dangers involved in prostitution.

In the context of the amendment that's before this House tonight, that the Children's Advocate would "prepare and submit annual reports to the Legislative Assembly respecting the operation" of this act, I think that is a very, very prudent recommendation. The reason is that if we simply pass this act and implement it, operationalize it in strictly a justice sense, we're missing out on so much information about these young women.

What type of information you might ask? Well, one of the things of course, a huge risk for them, is HIV or other types of infection. In the way in which I hope one day to see the Children's Advocate office operate in this province, in an independent capacity, that office would be in a position to look at and study what the incidence is of HIV amongst this group. What is the incidence of teenage pregnancies within this group? Also, if in fact there are births, what is the incidence of low birth weight? We know in Alberta that we have had consecutively very high incidences of both of those: teenage pregnancies and low birth weights. Is there a correlation between that and prostitution? At this point in time we can't tell that.

Another interesting bit of information that the advocate could look at is: what are the demographics of prostitution? Well, certainly having, as I said, toured in downtown Calgary, we know that the urban centres are magnets for that type of activity, but how widespread is the problem? Do growing communities with high transient populations like Fort McMurray have a growing prostitution trade? Are there issues in parts of rural Alberta? These types of things and coming to a real understanding about what prostitution is in Alberta and why people resort to it are going to be lost, because the act as it exists now will simply operate in a justice sense if we do not pass this amendment. And that, Madam Chairman, I think would be a travesty.

Another very relevant piece of information that could be examined by the Children's Advocate is how many of the young women who are turning to prostitution have in fact left home because of abuse, attempted to find funds through SFI or some type of government program and been turned away? As long as the Children's Advocate office has been operational in Alberta, we have seen consecutive advocates talk about the lack of programs and funding for 16- and 17-year-old youths, and this is also an age group that we see engaged in prostitution. Is there a correlation, Madam Chairman? That, I think, would be very, very relevant to know.

It's not good enough that we scoop them off the street. Even with the amendments to make this bill Charter compliant, we will one at time help these individual young women, but in order to actually prevent young women from going into this dangerous occupation, we have to understand: what are the factors that prompt them or force them to engage in this activity? We're not going to understand that unless we engage an office like the advocate into doing this type of reporting on an annual basis for the operation and administration of the act.

Now, if you think about it, the amendment's not going to cost the government really any money because we have the advocate in place. He's required to do an annual report. This would simply mean that in the context of his annual report, which he's already doing, one aspect of his reporting would be on the administration and operation of the prostitution act. So it's not a high-cost amendment, and really, Madam Chairman, I can't see any reason why the government would choose to not support this amendment this evening. It certainly is in the best interests of children. It's preventative. It makes us better equipped to reduce and prevent growing numbers of women resorting to this occupation and I think in the long term will serve the Assembly well.

So with those comments I am pleased to have had the opportunity this evening and look forward to perhaps hearing some government discussion about the amendment.

Thank you.

8:20

MR. DICKSON: Madam Chairman, I appreciate the observations of my colleague from Edmonton-Riverview, and I'm glad she was able to attend and participate in the debate, notwithstanding the flu.

One of the things I was going to say is that there's another reason why I think this amendment is important. Members will recall that on January 13, 1999, the Premier wrote the Prime Minister expressing Alberta's qualified support for the objectives and principles of the UN convention on the rights of the child, and the comment by the Premier was as follows:

> As a further indication of our commitment to children and families, we would like to extend our formal support for the federal government's ratification of the U.N. Convention on the Rights of the Child. Our support is based on the understanding that the U.N. Convention does not usurp or over-ride the authority of parents and that any interpretation of same with respect to Alberta will be undertaken as though a reservation had been placed at the time of ratification in that regard.

Well, that's a representation by the Premier on behalf of the provincial Legislature, and what that means, then, is that we're entitled to look at the extent to which this bill complies with the UN convention on the rights of the child. It's interesting, that report I referred to earlier, UN Convention on the Rights of the Child: How Does Alberta's Legislation Measure Up? by Anna S. Pellatt and the Alberta Civil Liberties Research Centre. On page 32 under recommendations for improving compliance she says:

> The jurisdiction of the Children's Advocate should be expanded to include children who have applied for but been denied protective services under the Act as well as those who have registered reports of abuse and neglect.

This is something that should be done, and that expansion of jurisdiction is surely what we're talking about. Instead, what we have is the Minister of Children's Services, virtually by implication if not expressly, saying that the Children's Advocate office may in fact have curtailed responsibility.

We have to look at the following articles to determine whether we're in compliance, and I suggest that the amendment would ensure that we were in compliance. Let me just back up and say that one of the challenges of the UN convention on the rights of the child is that it requires that states parties monitor the progress of implication efforts and report to the United Nations committee on the rights of the child. That's the body charged with responsibility for monitoring compliance at regular intervals.

In 1994 Canada prepared and submitted its first compliance report. The next report was due in 1999, and 2004, presumably, is the next one. What we're going to have to be able to demonstrate is that article 3, which is directly engaged by this bill – article 3 has to do with:

> States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Well, this amendment actually speaks to one of those appropriate legislative and administrative measures.

Also in article 3:

> States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Well, what better way of measuring and assessing compliance with article 3 than having this form of annual reporting mechanism.

Article 19 of the UN convention on the rights of the child talks about:

> States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence.

Now, some members may be concerned, because they were members for such an embarrassingly long time, that the province refused to do what every other province had done, which was to affirm the convention. But, as I read a short time ago, that letter on January 13, 1999, from the Premier of this province to the Prime Minister expressed Alberta's support for the objectives and principles of the convention. [interjection] Yeah, well, actually if Alberta were a sovereign state, we would have an expectation that they'd be signing on, and the next best thing is a form of endorsement. I think we've got that now, although it was very late.

Anyway, article 20. I'm not going to read the whole thing, but if members look at it, it makes the case in terms of ensuring that a child

> temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

This is perhaps the most important one, Madam Chairman. I should have dealt with this one first. I apologize for not dealing with it immediately. Article 25 says – and this is particularly important:

> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Well, does this proposed amendment not directly serve that objective?

Judging by the scowls of some members opposite, I take it that the news is disheartening in terms of the federal election campaign.

But, Madam Chairman, I think the point is: we have an article here that would very effectively be addressed with the amendment. Also, article 27 deals with "appropriate measures to assist parents and others responsible" for children and recognize the right of every child to a standard of living.

Anyway, the only other article I thought might be relevant would be article 37. I just emphasize article 37(d), which says:

> Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

So this probably would be equally instructive in terms of the first two amendments, A1 and A2, and we've dealt with those, but it still speaks to the importance that the UN convention attaches, notwithstanding the curious view proffered by the Minister of Justice, that if your end is a noble one, it doesn't matter what the effect of the law is, which, as I say, is just plain erroneous.

In any event, I can't think of anything else to add, other than again to refer members to the UN agency report of November 20, 2000, sexual commercialization of children. If one reads through that and you look at the extent to which Canada in fact has not even done what it undertook to do in terms of compliance with this United Nations protocol to deal with the sexual commercialization of children, I think adopting an amendment like this would at least help to ensure a higher level of compliance than we have now.

8:30

Those are the observations I'd like to make. I would still look forward to any further debate, and if not, then to the vote, Madam Chairman.

[Motion on amendment A4 lost]

[The clauses of Bill 29 agreed to]

[Title and preamble agreed to]

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

HON. MEMBERS: Agreed.

THE DEPUTY CHAIRMAN: Opposed? Carried.

Bill 20
Justice Statutes Amendment Act, 2000

THE DEPUTY CHAIRMAN: We have an amendment that has been brought forward, amendment A1.

Hon. Deputy Government House Leader, are you standing?

MR. HAVELOCK: If I understand correctly, the Minister of Justice has moved all the amendments. Has he not?

THE DEPUTY CHAIRMAN: The table has an amendment, A1, which is a very lengthy amendment. Yes.

MR. HAVELOCK: Okay. No, I have nothing to add, Madam Chairman. Thanks.

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

MR. DICKSON: Madam Chairman, I do have something to add, a couple of things I think it's important to put on the record. I think the opposition has been supportive of the bulk of the elements of the Justice Statutes Amendment Act, 2000. I want to acknowledge that the Minister of Justice approached my former colleague, Sue Olsen, in the spring session and outlined for her what he was proposing to do. I appreciated his candour and the information he provided at an early date and an early enough date that it allowed us to do some consultation and review with respect to the elements of it.

I think it has been advantageous that in fact the bill didn't proceed faster in the spring, because we now have what looks like about 10 pages of amendments which have come forward to it. I wanted to spend a minute simply going through those elements we did not have a difficulty with.

I wanted to say that one of the sections that has been so contentious had to do with section 74, and certainly there has been some recent public discussion around this. I know there's an argument that the plaintiff's counsel hadn't been heard from until recently and that those are the people principally interested in the change. I'm not sure that's entirely accurate. I think this whole business of compensation on death for loss of future income is a difficult area.

I encourage people to read the Alberta Law Reform Institute's final report 76, Should a Claim for the Loss of a Chance of Future Earnings Survive Death? If you look at page 3 of that, you have the words of Chief Justice Brian Dickson. In talking about the exercise, if I can describe it that way, of assessment of damages for loss of a chance of future earnings, former Chief Justice Brian Dickson had referred to:

> "gaze . . . into the crystal ball;" engage in "speculation;" rely on actuarial evidence the reliability of which is "illusionary" in relation to a specific case; and engage in "arbitrary" determinations.

This is a quote from the report of the Law Reform Institute.

> Such a process is justifiable in order to ensure that a living plaintiff is properly compensated, but it is not justifiable when the damages cannot go to compensate a living person.

I know that my friend from Calgary-Glenmore will be familiar with this, because at the time this was written Alan Hunter was probably head of the Alberta Law Reform Institute.

I think I'm sympathetic to the concern identified by the Alberta Law Reform Institute in terms of how to deal with this, but I think part of the problem for any of us who have ever practised law and had to explain to parents who have seen their son or daughter killed, whether it's in a motor vehicle accident or some other kind of injury, is how you explain to them that there's really no significant compensation for that loss. Now, the finding of the Law Reform Institute was that you can't ever compensate for the loss of a child anyway, but if you get into this business of dealing with lost anticipated earnings, it's so speculative, and there are huge elements of speculation with it. We have a court system that, frankly, doesn't usually spend a lot of time dealing with conjecture and surmise and speculation and a legal system that looks for certainty and predictability. That becomes a real problem when we're dealing with loss of prospective earnings.

So what am I saying? Well, I think it was appropriate to undertake further review of this and perhaps some further consultation, but I think I simply wanted to record that at least this legislator, as Justice critic for the opposition, understands that the status quo isn't particularly satisfactory either, from what I might describe as a philosophical or a conceptual approach to dealing with these kinds of damages. I think the minister has done an appropriate thing, and I was encouraged that he didn't simply dodge something that attracted some flak and some contention by saying: "Well, that's it. It's out of the bill." What I heard him say was: we're going to look at this again and see if there is perhaps a more satisfactory way of dealing with this than just eliminating it altogether. I don't know exactly where he's going to go with that, but I think it's important we don't lose sight of the recommendations in report 76.

The other thing I might just note is that there was an interesting decision that came out of the judicial district of Calgary – that's where lots of interesting law is made, Madam Chairman – in the action Lemke and Pottie. It was a judgment by Mr. Justice Lomas. He wrestles with and applies the law insofar as we have a death claim. This was a case where the plaintiff's daughter, age 35, had been killed in an automobile accident near Ponoka. She was an unmarried person not living with another individual. The parents commenced a claim against the tort-feasor, the wrongdoer, and they claimed damages for their daughter's death pursuant to the provisions of the Fatal Accidents Act.

8:40

As one reads through the case, I think we're reminded again of the difficulty in providing compensation in cases like this. Justice Lomas, as he always does, takes us through in his reasons for judgment I think a thoughtful analysis of the legislative history and makes significant mention of report 24 and report for discussion 12, June 1992, titled Non-Pecuniary Damages for Wrongful Death Actions. I just would encourage members to read the analysis of Justice Lomas, who deals with the very issue that is before us and certainly before the Justice minister in dealing with this.

It might be appropriate to make this quote from Justice Lomas. It says at page 31 of his judgment:

> In its Report No. 26 the Institute . . .

I say parenthetically that he's referring to the Law Reform Institute.

> . . . comments "Grief flows from love of the child and this does not depend on the age of the child . . ." It also comments "No award or an insignificant award for their grief and loss of guidance, care and companionship of the deceased is a signal to the surviving families that the law sees their loss minor, trivial or insignificant."

I'd just leave it to others to review that analysis from Justice Lomas's decision.

As we go through the other provisions, we see an increase in the jurisdiction of the threshold, the jurisdiction of Provincial Court, and I think that is a positive thing.

I'm not sure we ever got an answer, Madam Chairman, to the question: what's the cost going to be of additional judges? I mean, what is it going to do to the caseload if you expand the small-claims ceiling to $50,000? If we ever got a response from the minister to that, I'm sorry, but I didn't hear it.

The clarification of "in contempt" to "in civil contempt" is, I think, useful.

The section 12 amendment. What we have seen is a lessening of the standard for service. So we now get to a point where

> (1.1) For the purposes of subsection (1)(c),
> (a) a copy of a dispute note . . .

This would be in a small claim procedure, Madam Chairman.

> . . . may be sent to a party by ordinary mail addressed to that party at that party's last known address.

You know, I have to record that in a constituency like Calgary-Buffalo the average stay of somebody in an apartment at an address may be four or five months. The voters list that's done for Calgary-Buffalo is probably already out of date, and I think it's only being produced by the Chief Electoral Officer this week.

So what happens is you're going to have – and I assert this caution – more people being sued in small claims court, and they're not going to know it because they're not ever going to get served with a copy. It's one thing if somebody is served personally. We know that they've got it. It's another thing when you send it double-registered mail or whatever or by certified mail. I can't keep track of all the things Canada Post now offers in terms of communicating material, but I think just to send it to the last known address is a very, very low threshold, and I want to register that concern.

I'm not going to go through each of the other changes that have been made. We've never heard, to my knowledge, an explanation of whether there was payment of the fees that were ordered to be paid by the Court of Appeal and the Court of Queen's Bench, one case involving a Provincial Court judge who was going to be reassigned by the chief provincial judge, and there was a determination by the court that – this is just a paraphrase because I don't have those decisions in front of me. There was a concern that this was something that went beyond the power of the Provincial Court. So we've spoken, and we've raised that concern in terms of the impact on judicial independence. I continue to have that concern.

As we go through the other elements, many of them have been requested or at least are satisfactory to the Law Society and the people who are directly involved.

The legal aid plan. Since I first became Justice critic in 1992, I had always suggested that the legal aid plan should be created as truly a separate society and have a kind of independence it hasn't had in the past. So I think that's a positive thing, although it's really important that government not see this as a chance to reduce their public responsibility to provide the funding for legal aid. Frankly, I'm quite worried about the future of legal aid, because I find that there's certainly a number of members in the government caucus, from their comments that I hear, that don't appreciate the value of the legal aid program. I didn't say all the members of the government caucus. I'm talking about the comments that I hear expressed to the media and at town hall meetings and things like that. If anybody would like to come, we can attend some of those meetings, Member for St. Albert, through the chair, when some of your colleagues talk about justice issues and talk about their concerns about legal aid. So that's part of the reality, and that certainly happens.

I continue to raise questions about the divisions of the Provincial Court into a sort of a homogenization of the Provincial Court. I've thought there were some great advantages that accrue to having different divisions. We've seen that just like many lawyers don't like to do family law, many judges don't like doing that kind of material. I've always thought that those decisions that you make around custody and access are arguably some of the most important decisions in the life of those children. It's important that you have judges doing that who have a genuine interest in what they're about. But I've expressed that concern before.

I think in the course of what's been a very long debate, we have registered many of the concerns with respect to Bill 20. We are in a situation where the government has the numbers, so they're going to pass it as it comes forward with the amendments, but I hope they will pay some attention to the concerns that have been expressed, because I think there are some worrisome areas with the amendment package.

So those are the comments I wanted to make. I guess I just wanted to say that as we finish debate on Bill 20, I can't help thinking of our former colleague for Edmonton-Norwood, whose future political fate is in the hands, I guess, not of the electors; they've already registered their vote and handed it to the vote counters. I'd just put on the record my admiration for her courage and wish her well and hope there's a successful outcome for her.

Those are the comments I wanted to make at this point in speaking to Bill 20, Madam Chairman. Thank you.

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

8:50

MRS. SLOAN: Thank you, Madam Chairman. I did have actually some important issues that I would like to get on the record, if I may, this evening that relate to Bill 20. This bill, in bringing forward quite a potpourri of amendments, I believe warrants some thorough debate.

To begin, I'd like to talk a bit about what I see as the amendments proposing the regionalization, if you will, of the courts, that being that we would do away with the separate divisions, be they currently criminal, youth, family, et cetera. You know, we've adopted that approach in other sectors in this province, and child welfare comes to mind immediately. We've seen the complexities of trying to force people, in this case judges, to become generalists. In child welfare and in health care for the last two years at least the Auditor General's report has been riddled with issues and problems about the inability of those systems to operate in a regionalized structure, and that is really what these amendments are proposing for the justice system; that everything be melted down and cases heard in that respect.

Now, albeit in health care we saw different discipline, we saw, when health care was regionalized, an approach taken that required anesthetists to become generalists. Prior to regionalization anesthetists would specialize and perhaps do obstetrics or they'd do ear, nose, and throat or they'd do general surgery. When the health care system was regionalized here in Edmonton, all of a sudden anesthe-

tists had to be required to do procedures. I'm certainly respectful of the fact that there's a huge, huge difference in the practice of an anesthetist and the practice and judgment of a judge. However, I think there can be strong cases made for expertise and knowledge of the law in each of these divisions that the government's amendments are proposing to wipe out.

I haven't heard – and I read back through the debates to see what kind of consultation the government had done about this – what people that would be impacted by this change were saying about it. I don't believe there's been anything put on the record, Madam Chairman, that speaks to substantive support for that. I can't help but wonder: is this designed in some way to serve as retribution for those judges that caused the government embarrassment when the government tried to roll back their salaries by 5 percent and the judiciary pointed out, and rightly so, that that was not within the government's purview to do?

Just to move to another section of the bill, section 74, which really deals with the ability of survivors to make claims against the government and the ceiling that the government's proposing to put on that through this amendment. I couldn't help but think that in the past we've certainly had some cases in this province, i.e. the sterilization cases, where if this had been in effect, obviously, perhaps from the government's viewpoint, they would have saved the taxpayers a lot of money. What we see really now is that there was a crime committed and judgment needed to be achieved. This type of amendment would have ensured no justice for the victims that suffered that abuse, Madam Chairman. So I think that when we reflect on that in the historical sense, it's important to consider it but also consider what is being proposed in this amendment in the context of using an example from another provincial jurisdiction, the contamination of water in Walkerton.

A number of people died as a result of that, directly linked to the provincial government. This in fact would limit the legal actions that could be taken if such contamination occurred here. Is that partially what's motivating the government? We certainly know that in the southern part of this province, where we have intensive livestock operations, there is absolutely surface water contamination, and in many communities south of Calgary, in the Lethbridge area, the communities are having to boil their water or have bottled water on a regular basis. Are we in fact saying to those Albertans that if some type of outbreak occurred and there were deaths, their ability to litigate would be restricted by this amendment? I think that's a very important question, one that needs to be answered.

We also know that there have been many studies conducted relative to the Bovar waste treatment plant, the amount of contamination that that plant has caused both in wildlife population and in humans that are residing within proximity of that plant. Is the government saying through this amendment that if in fact in the future that plant and the fallout were linked to deaths, deformities, et cetera, the government is not responsible? Is that the intention of section 74? Difficult to support that, if in fact that is the intent, Madam Chairman.

Now, I wanted to also speak to section 21, and I did reference some of the subsections in 21 in my earlier comments on this bill. I should also note that I referred to Judge Reilly as Justice Reilly, and that was an omission on my part, which I'd like to make the point of correcting for the record this evening. With respect to 21.1(7), which is specifically the section in which the bill proposes that any decision or action by a Chief Judge would not be subjected to any form of judicial review, I don't profess to be any type of judiciary expert or legal expert, Madam Chairman, but I am aware that the Chief Judge is a government appointment. So why would we say as government, if we're appointing someone, that that person shouldn't be required to make decisions and actions that are fully compliant with the law, and if there's reason to believe that they have not done so in that manner, that their decision should not be subjected to some form of review?

I'm thinking that the government appoints a number of other positions in this province. All of them would be most certainly subject to judicial review. Whether they be perhaps the chairman of a regional health authority or the chairman of a child welfare authority, they most certainly could have judicial review actions. But in the case of the Chief Judge, the government is saying no, and I don't understand why that person should be exempt. The power of the Chief Judge over the other judges in fact constitutes a serious threat to the judicial independence because the Chief Judge is appointed by the government and has the ability to use his statutory power over judges to control them according to the wishes of the government. Because of the crucial importance of judicial independence to the preservation of freedom in a democratic society, the exercise of any authority over judges should be exercised according to the highest standards of reasonableness, openness, and strict adherence to jurisdiction.

9:00

An alternative, Madam Chairman, if the government were open to considering it for this section and not to only criticize what has been proposed, is that it would be most easy to amend the section to say that every decision of a Chief Judge in relation to a sitting judge could be subject to judicial review and, if reviewed, should be reviewed on the principle that judicial independence requires that authority over judges should be exercised according to the highest standards of openness, fairness, and strict adherence to jurisdiction. I don't believe it's unreasonable to expect the Chief Judge to act and to rule to the highest standard. I don't think we should expect anything less.

Now I'd like to turn to just a couple of comments that arise out of a report which was produced by the National Council of Welfare titled Justice and the Poor. It was published in the spring of 2000. There were a number of recommendations in this very, very thorough report, Madam Chairman, that dealt with the treatment of the poor by the justice system. Because we have a bill before us tonight that has initiated the review of a number of aspects of the justice statute, I think it's relevant to question the government on why, in fact, some of these recommendations were not given more consideration and incorporation.

I found it very interesting that on page 77 of the report – we see amendments in the package that talk about the payment of fines. In fact, in the National Council of Welfare report they surveyed the different provinces for the number of adults admitted to provincial prisons in '97-98 for the failure to pay fines, including fines for federal criminal offences and for quasi-criminal provincial and municipal offences. Now, of all provinces, Madam Chairman, Alberta was in the position of ranking the second highest in the country, second only to Quebec. We had reported 12,709 people who were in prison because of their failure to pay fines. In contrast, Ontario only had 679; Manitoba, 72; Saskatchewan, 195.

In the research that the national council did, they looked at who went to prison for the nonpayment of fines and the offences they committed. There was very little recent information on this available, they found, and absolutely none available on young offenders. The only thing they could find about the situation in Alberta is that more than three-quarters of the imprisonments for fine default in that province in '97-98 were for violations of provincial laws and municipal bylaws. A study of women inmates in the late '80s and early '90s found that the fine default played a major role in

their incarceration, especially for aboriginal women in the prairie provinces. In Alberta we had 39 percent of female inmates admitted for fine default. That was the demographic.

The amendments before us tonight really do nothing to address that. I know that my hon. colleague from Edmonton-Centre spoke earlier on in debate about the implications and their effect on women, but I think this gives more credence to the need to examine our approach to fine collection and the imprisonment of those who default.

I also wanted to raise from this report what I also believe were very prudent recommendations, and they related to the issue of youth crime. We know that young offenders and the issues of youth crime and youth gangs are very prevalent on the minds of Albertans, and we'd like to see the government doing something proactive to address it.

Let me just quickly read these for the record. The National Council of Welfare supported the approach of Quebec authorities towards minor crime and recommended that all jurisdictions adopt a policy of minimal police intervention except when absolutely necessary. What they found in their review was that again we were overzealous in incarcerating young people. In a similar sense they recommended that there be an establishment of a multidisciplinary team approach to deal with the multiple problems of many street people who end up in the criminal justice system with substance abuse and mental health problems. This also constitutes a large portion of our demographic population in prisons. We don't see that type of approach being taken, Madam Chairman, nor is it incorporated within the statute itself that is before us this evening.

So I think there is a need for a broader examination of some of the issues Bill 20 touches upon, Madam Chairman. With those comments I will adjourn my remarks this evening.

[Motion on amendment A1 carried]

[The clauses of Bill 20 as amended agreed to]

[Title and preamble agreed to]

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

HON. MEMBERS: Agreed.

THE DEPUTY CHAIRMAN: Opposed? Carried.

The hon. Deputy Government House Leader.

MR. HAVELOCK: I would like to move that the committee do now rise and report.

[Motion carried]

[Mrs. Gordon in the chair]

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

MR. SHARIFF: Madam Speaker, the Committee of the Whole has had under consideration certain bills. The committee reports the following: Bill 27, Bill 29. The committee reports with some amendments Bill 20.

Madam Speaker, I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

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

HON. MEMBERS: Agreed.

THE ACTING SPEAKER: Opposed? So ordered.

[At 9:11 p.m. the Assembly adjourned to Tuesday at 1:30 p.m.]