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The Honourable Kenneth R. Kowalski, Speaker

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Legislative Assembly of Alberta

7:30 p.m. Tuesday, November 17, 2009

[Mr. Mitzel in the chair]

The Acting Speaker: Please be seated.

Government Bills and Orders
Second Reading

Bill 53
Professional Corporations Statutes Amendment Act, 2009

[Adjourned debate November 4: Mr. Kang]

The Acting Speaker: The hon. Member for Edmonton-Centre.

Ms Blakeman: Thank you very much, Mr. Speaker. I'm pleased to be able to rise and speak to Bill 53 in second reading, that being the Professional Corporations Statutes Amendment Act, 2009. I listened fairly carefully to the sponsor of the bill and his outline of what he was expecting this amendment act to produce, but I've heard from a couple of people who are raising some concerns about where the bill fails to address something or it goes too far and where it doesn't go far enough.

I'll admit that I don't always agree with these comments because, let's face it, part of what's being anticipated here is that in allowing family members to fall under the professional corporation that the professional sets up to support their business, there are choices that are then made available to those concerned that are essentially about making use of different tax rates. Ultimately, what we end up looking at here is a way for people who are doing pretty well to be able to take advantage of lower tax rates or to avoid paying taxes at all. In my mind that's always called "forgone revenue" because other than for the legislation in front of us, we would have been collecting a certain amount of tax.

It's a tool that government can use. There are always incentives and disincentives, and for public policy the incentives and disincentives that are most readily available to government are taxation schemes. My question in these situations is always: what do we get for the forgone revenue? You make a decision that you are going to accept less tax or no tax because you're trying to encourage people to do something or not do something. So I say: all right, if we're going to be accepting less tax into the coffers, into the general revenue of Alberta, and have less money available to pay for health or environmental protection or culture, what are we getting for it? What behaviour are we trying to change? What are we trying to achieve here? That is what I'm missing out of the explanation from the member, and I think it's something that we need to consider when we look at schemes like this.

Aside from this, it'd be a great idea for people that are professionals – accountants, lawyers, dentists – who can set up a professional corporation and then decide to put these shares amongst their family members. What do we as a society gain from that? Or is the purpose to enable these individuals to pay a lesser rate of tax or to share their good fortune with their family members or those they choose? How do we as a society benefit from that?

So a couple questions here. My understanding is that part of the incentive behind this was to bring Alberta into line in the TILMA agreement with B.C. around how they handle their professional corporations. What we have right now is that you can't have a professional corporation in B.C. and transfer it straight through into Alberta. You'd actually have to shut it down in B.C., move to Alberta, start it over in Alberta. So if my understanding is correct and part of this is to make a transition according to the TILMA agreement that the government has signed, to make that transition straight across so you don't have to do that, then this bill did not accomplish that because it doesn't put in place what we need for those companies to operate in both provinces or to move from province to province.

This is specific to the professional corporations. Obviously, standard corporations are able to do that between B.C. and Alberta and vice versa, but we're talking about professional corporations in this particular instance. So it doesn't comply with TILMA. Why? Why did you do this and bring it before this Assembly when it doesn't comply with TILMA if that's what we were trying to do here? A first question.

Two, the classes of people that are allowed to be involved with these nonvoting shares, some point out to me, are unnecessarily restrictive. On some of these I agree, and on some of them I don't. If we stay with the status quo of what we have, we have a situation where people involved in professional corporations are required to essentially take their excess cash out periodically by way of what I'm told is called a butterfly transaction and then put it back in again. If you have a holding company, which could be created, but this bill does not create those holding companies, you wouldn't be required to do that. It's pointed out to me by people involved in professional corporations that, you know, it's not cheap to be able to sort of do this butterfly transaction every three to five years as is currently required. So why couldn't they make use of a holding company? It's very common in other places for small businesses but is not anticipated in this legislation.

There is limited use of family trusts. It appears that you can only have a family trust that has minor children as beneficiaries. That does ignore the sandwich generation. It does ignore having the possibility of having parents as a nonvoting shareholder. Again, that gives you the opportunity to choose what tax rate you'd be using, and of course someone that was a senior would be operating under a lower tax rate, so it is opening up that possibility. Maybe you intended to do that; maybe you didn't. But it does not allow for and recognize that sandwich generation. I'm a sandwich generation. A lot of my friends are currently caring for their aged parents, and they're still looking after their kids who are in school or in university. This act doesn't let them do anything except for minor children.

The point was also made to me – and I'm not sure what to make of this – that adult children perhaps should not have access to their parents' business and that you could have a family trust holding shares instead of the adult child directly, so you could prevent a situation where you had an adult child having influence on a corporation. The second point that's made around that – and this one, frankly, is one that I flat out disagree with, but the point is well made – is that if you have an adult child who's involved in that family trust and they are married and get divorced, then that parent's professional corporation has to find a way to compensate the departing spouse, for which I would say: "Yes. That's entirely appropriate. That's why we have a Matrimonial Property Act." But perhaps others would argue the other, which is that they don't want to be able to have those ex-spouses having access to the professional corporation's assets.

This also ignores the fact that there are adult children who are disabled and can't hold property in their own name because it would affect their AISH benefits, but having it in a family trust would allow that disabled child, whether adult or not, to benefit from being a member of that professional corporation and perhaps gain some assistance that they wouldn't be eligible for otherwise.

The last point that was made to me was that it ignores others in the family that may be in need of assistance from time to time. For example, an adult sibling or an aunt and uncle who may be in need of some additional help from which the professional corporation could gain a tax advantage by giving them that assistance could take advantage themselves of a lower tax rate if they were dealing with someone who was, for example, dependent for an extended period of time, a disabled person for example. That is not available under this bill either. So a number of points have been raised about things that were – I'm not sure – either deliberately or inadvertently left out of the act.

7:40

Some of the points, as I said, I agree with, and some I most definitively do not agree with. I don't think that using a family trust to get out of having to compensate an ex-spouse is what we intended when we wrote legislation like that. But I can understand that if you were a parent who was a lawyer or a physician who had set up a professional corporation and you'd given a nonvoting share to your adult child whose family now breaks up, yes, you would be in a position where you would be expected, out of that professional corporation, because your adult child has a nonvoting share, their spouse is entitled to some of that money, and maybe that's not what you intended when you worked so hard all those years. Those kinds of things need to be taken into consideration, and maybe that was considered by the sponsor of the bill and that option was deliberately not made available as a result of that. I don't know, but I am interested in hearing it.

I understand the concept behind what is in Bill 53. I'm not sure if there was any kind of consultation in the wider public. I had people contacting me looking for an opportunity to speak to a committee or to a public hearing on this bill, and they couldn't find one. At that point I had to tell them: no; it's already in debate, so you're not going to find one now. But I incorporated some of their comments into the ones that I've raised tonight, so they're on the record.

In the end I'm undecided about whether to support this bill in principle or not because I'm curious as to why certain things have been left out and other things have been put in. According to what I heard the sponsor say they wanted to do, I think they fall short in doing it in this bill, and I'm wondering why. But I also never heard the sponsoring member say anything about TILMA, yet clearly that is – I mean, definitely people in the sector understand that that's what's behind this bill, an expectation that it is going to, you know, mesh the two provinces together under that agreement. So why wasn't that mentioned?

I'm struggling to support something when I still have so many unanswered questions. Given the composition of the House I'm sure the bill will pass second reading, and my one little vote is not going to stop that, but I'm still interested in getting the answers to those questions. I look forward to Committee of the Whole and to getting some answers back from the sponsoring member at that time. We can proceed from there.

Thank you for the opportunity to put those concerns on the record. I appreciate it.

The Acting Speaker: Standing Order 29(2)(a) is available.

Do any other members wish to speak? The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you very much. The hon. member, my colleague from Edmonton-Centre, did a very good job of explaining the yin and yang, the pros and cons and concerns of the bill. Like my colleague from Edmonton-Centre, I look forward to further qualifications and explanations that were raised by the hon. Member for Edmonton-Centre.

In terms of the so-called pros of this particular act, one thing it will do is bring us into line with existing legislation, to a degree, in both British Columbia and Ontario, although as the hon. Member for Edmonton-Centre noted, it won't provide the same degree of tax relief – some might say tax evasion – that the other provinces allow. But what it will do is encourage professionals, whether they be health, legal, medical, accountants, and so on, to do well in the province of Alberta. As the hon. Member for Edmonton-Centre pointed out, in their doing well are we benefiting from their financial wellness? I think it could be argued that if we are able to attract more professionals, whether they be doctors, lawyers, dentists, et cetera, then the chances of our quality of life improving would be noted and of value.

One of the concerns I have, though, is that with the tendency towards delisting, some of the benefits that would potentially be derived from these services will no longer be available. For example, this amendment will extend nonvoting share ownership of professional corporations to family members. If passed, our province's accountants, lawyers, doctors, dentists, chiropractors, and optometrists will have the ability to access some of the benefits of being incorporated, including some tax benefits. These benefits are currently enjoyed by the same professions in other western provinces, as has been previously noted, as well as in Ontario. However, in Ontario and B.C. chiropractic services are part of the health services funded under universal health care. The government has recently pulled the plug on chiropractors, so the encouragement for chiropractors to continue practising in this province has been considerably undermined by cutting them from the list of covered services.

Likewise, when it comes to optometrists, the government has cut back on, for example, paying for eye exams. It used to be that the cost of an eye exam – in other words, being proactive and promoting good eyesight and good eye care – was something to be considered under our universal health care coverage. That coverage no longer exists. On top of that the number of surgeries – for example, for glaucoma – has been reduced. So, again, optometrists may literally be looking elsewhere. These are concerns that we have to take into account.

Now, as for encouraging lawyers to incorporate, my brother is in that position and my son-in-law, who has recently become a partner with Bennett Jones, has part of that potential ahead if he so chooses. I hope that my son-in-law together with my daughter will keep me in the style that I have been accustomed to. Therefore, if they choose to incorporate, I think this would be of value.

An Hon. Member: Relevance.

Mr. Chase: Now, was that relevance or relatives? I'm sorry. I didn't quite hear the comment. Possibly the Speaker can interpret the comment for me. He may have heard it better from his position than I did from mine.

I'm willing to believe that by having these professionals supported to a greater extent in this province, the potential of their practice and our benefit from their practice will be increased. So I go into this with a degree of naïveté but a desire to increase the number of professionals in this province and support them. In this case we're providing them with tax incentives. Hopefully, they're going to spend their savings in terms of building this wonderful province we find ourselves in. If that's the case and that money is returned, then the bill will have achieved at least part of its goal.

Now, the hon. Member for Edmonton-Centre also pointed out the limitations on dependants in terms of who can be a part of the so-called family corporation, and the thought of the dear aunt or the dear uncle or cousin James not being able to be covered as part of the corporate status does create a bit of concern, but I would hope that the increased wealth and earning potential that incorporation brings will also bring with it a degree of mercy and consideration for other family members.

7:50

The Member for Edmonton-Centre also pointed out what happens when the so-called corporation starts to disincorporate in terms of divorce and breakups of families, family feuds. We all know what happened in New Brunswick with the McCain brothers and their corporations and the bitterness that resulted. Of course, I'm sure there were families of lawyers incorporated that did rather well by their arguments and falling apart, from a corporate point of view.

I look forward to further clarification. As the hon. Member for Edmonton-Centre indicated, we're looking to be further educated on the benefits of this particular legislation. We do understand that it brings us in line with other western provinces and Ontario, and if this will have some degree of restoring what used to be referred to as the Alberta advantage, then it has potential.

Thank you, Mr. Speaker.

The Acting Speaker: Section 29(2)(a) is available for those who wish to Q and A.

Seeing none, any other members wish to speak? The hon. Member for Lethbridge-East.

Ms Pastoor: Thank you, Mr. Speaker. Just a couple of comments that I'd like to make on this. I believe that when this first came forward, the Member for Edmonton-Gold Bar had asked a number of questions regarding how much work had been done on the anticipated loss of revenue as a result of not collecting these taxes and how they were planning on recouping that tax that they would lose, which, of course, is revenue to the taxpayers of Alberta. The concept itself, I think, brings the rest of our professionals in line with the rest of the country, but I do think that that question on the numbers – I think that the average tax savings for each professional corporation in Alberta as a result of the changes was estimated at approximately $12,000, and it could mean an initial loss in tax revenue collected by the government. I know that there were further numbers that they had talked about in terms of getting that back and the anticipated number of people that this would help to retain. I think it's very important that we retain particularly our professional doctors.

Although it isn't mentioned here, I can see perhaps other medical organizations/people becoming incorporated. I'm thinking of, perhaps, nurse practitioners, who would then in fact have their own practices and would not necessarily be tied to a doctor's office, but even if they were tied to a doctor's office, they still could be incorporated. I can see benefits for perhaps other people, coming down the road.

I think that, clearly, in time this bill will be opened again, should it pass at this point in time, to include grandparents and other parents and perhaps disabled children, who would also be able to have their care looked after under this kind of an arrangement, so that it would fall in line and meet the TILMA regulations or the obligations that have been set up under TILMA.

With that, Mr. Speaker, I would look forward to some of the answers when this is passed into committee.

The Acting Speaker: Standing Order 29(2)(a) is available.

Any other members wish to speak? The hon. Member for Edmonton-Strathcona.

Ms Notley: Thank you, Mr. Speaker. It's a pleasure to be able to rise and speak briefly on this interesting bill, Bill 53, Professional Corporations Statutes Amendment Act, 2009, maybe not so briefly if people are actually listening. I think that the sponsor of the bill, when he introduced it a few days ago, actually did a very good job of summarizing the competing policy considerations and probably the crux of the issue that one would have to measure in terms of deciding whether or not to support the bill.

In essence, he talked about providing what is in effect a tax cut for professionals as a means of attracting them and keeping them in the province. He identified, however, that that would probably be contested by those who might suggest that now is not the time to be offering tax cuts in Alberta, a time when we're hearing about the need to tighten our belts and to cut our funding and to be responsible and for everybody to pitch in and all that kind of great stuff that the government likes to roll out when they get into financial trouble. I think, actually, that that was a really nice summary of the dichotomy of issues that we need to address in considering this bill.

Do we need this particular change in order to maintain a level playing field with professionals in other jurisdictions and in order to promote equity among professionals within Alberta? Well, I think it's certainly true that there are some professionals already within Alberta who get the benefit of this while others don't. But I would also suggest that for some professionals, if this is passed, there will be additional inequity caused because for every lawyer that works in a private corporation, in an incorporated professional office, there's another one that works on staff, some even for the government, heaven forbid. They do the same job, yet one gets this tax break, and the other doesn't.

For every doctor who sets up their own little private clinic and maybe even starts doing a little private, delisted stuff on the side, they get to income split and enhance their tax outcomes, while the doctor who just out of the goodness of their heart might choose to work in one of the very few primary care centres where doctors are salaried will have yet another impediment to making that decision, even though we know that decision is, ultimately, probably the best decision for the provision of health care across the province. So there's inequity no matter what you do. You're going to pass this legislation to fix one form of inequity only to create another form of inequity amongst the same group of professionals. I'm not convinced that the inequity issue amongst professionals within Alberta is a particularly compelling argument.

Now, if you look at the issue of whether there's equity across jurisdictions, that too is an interesting question. Yes, there's no question that some professionals who have the opportunity to engage in this income splitting in other jurisdictions don't currently have that opportunity here. Let's also look at other things that happen in Alberta. For instance, the blended tax rate in Alberta for people who earn over $126,000 a year, which is, of course, the group to which this would apply primarily, is 39 per cent, whereas in B.C., for instance, the blended income tax rate for that same income group is about 45 per cent. So the fact of the matter is that these professionals in Alberta are already gaining an income tax bonus by being here.

So what are some of the other things that compel professionals to stay in Alberta, to invest in Alberta, to want to set up their business here and grow our economy and grow our communities? Well, I would suggest that there are other issues above and beyond tax cuts, and I would suggest that they relate to quality of life, whether you're

talking about the fact that we have a sort of an Alabama-esque approach to the environment versus the more progressive approach that once existed in B.C. and to some limited extent still does, whether you're talking about issues of child care, and I speak for myself, as prior to being elected, I could have been characterized as a professional. Issues around affordable child care are extremely compelling, issues around where you ultimately decide to settle and to live, because child care may or may not cost you $1,500 a month, depending on the jurisdiction that you live in. Certainly, we know that in Alberta we have the lowest per capita funding for child care in the country.

8:00

Another issue, of course, is having a robust system of public education. How big are our class sizes? What kind of access to special services do our kids have? How committed are we in Alberta to public education? This is the kind of thing that would impact my decision on where to locate.

Even more connected to professionals is the issue of tuition and the issue of tuition for professionals. We just heard that the government is actually thinking about removing the cap on tuition in order to significantly bump up the cost of tuition for the very professionals that we purport to want to keep here through this tax cut. This is an interesting irony. We're saying to the students that they're going to have to spend $40,000 to $50,000 a year on their education costs. I've heard from dentistry students, for instance, who tell me that that's roughly what they spend right now.

What that means, basically, is that low- and middle-income very smart students don't have access to become these professionals. The only people that get to go to school and become these professionals are the wealthy. Then once they exercise the privilege that comes to them from being from a wealthy family and they become these professionals, we'll keep them here by giving them a tax break. Wouldn't it be a better way to grow our professional pool by actually increasing access to these professional programs to all members of the population rather than just the wealthy few and that we do that, rather, not through tax cuts but by ensuring an ongoing commitment to investing in equitable public services, including advanced education, and equitable access to professional degree programs throughout the province? That's what we're not doing right now. Those are some things that I think are equally compelling when it comes to determining what would make professionals want to stay in Alberta, what would make Alberta attractive to those professionals.

I also want to talk about a different form of equity, and that's equity with respect to people who are earning this general amount of money. Why is it that a lawyer who earns $150,000 a year and has a spouse who stays home should be able to income split, but a boilermaker who earns $150,000 a year working just as many and probably many, many more hours than the lawyer, in much less enjoyable working situations and working environments, does not get to income split? Well, the difference is that one is a professional in a professional corporation and the other is an employee. Again, we're looking at inequity being established through this particular piece of legislation.

So when it comes to tax cuts and increasing taxes and that whole thing, my view is that there needs to be a progressive tax system, one that ensures enhanced and equitable access to the public system that we build and that there needs to be equity amongst all types of professionals and all types of workers in Alberta, whether they be neurosurgeons, whether they be exceptionally lucky floor cleaners. Whatever the case is, it should be on the basis of the income they earn, not the job they do.

Generally speaking, that is sort of a summary of the concerns we have about this bill.

There was a really interesting point made by the Member for Edmonton-Gold Bar when this bill was first introduced a couple of days ago wherein the sponsor of the bill talked about how this bill, if passed, would represent about a million dollars of foregone income tax revenue. Conversely, that member was told in a briefing that we're actually looking at it being worth about $12,000 per professional corporation. Obviously, there's a huge disparity. I don't know if one number included federal taxes while the other one didn't. I'm not sure. But I certainly would want to hear from the sponsor of the bill very clearly what the expected foregone revenue is to provincial coffers as well as to federal coffers. Quite frankly, we receive money from the federal government, so we ought to maybe think about what it is we're planning to forgo when we go about suggesting that they should receive less.

Those are the questions that I have, and I'm looking forward to receiving information in that regard from the sponsor of the bill as discussion of the bill moves forward. Thank you.

The Acting Speaker: Hon. members, Standing Order 29(2)(a) is available.

Seeing none, any other members wish to speak?

Shall I call the question?

Hon. Members: Question.

[Motion carried; Bill 53 read a second time]

Bill 56
Alberta Investment Management Corporation Amendment Act, 2009

[Adjourned debate November 5: Mr. MacDonald]

The Acting Speaker: The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you very much. Bill 56 is an interesting piece of legislation because, on the one hand, it seeks to give the Alberta Investment Management Corporation, AIMCo for short, greater autonomy. It achieves that by removing the requirement that the deputy minister of finance be a board member of AIMCo.

Again I'm using those terms "yin and yang" and "pro and con." On the pro side it would allow the government to divest itself, to a degree, of decisions made by AIMCo. Now, for example, decisions made by AIMCo this past year saw a reduction of about $3 billion in our heritage savings trust fund and an overall loss of investment through some unwise practices such as asset-backed commercial paper, accounting for about an 18 per cent loss in investments. That being said, there were a number of jurisdictions whose losses were in the 30 per cent category.

In one sense it allows the government off the hook to a degree. It can't necessarily be accused of meddling in the affairs of AIMCo, being an independent investment management corporation which still has to report to the minister of finance. After a fashion the minister of finance could say: well, yes, they are arm's-length independent, but they still have to report what they are doing back to me as the minister of finance.

We have the good fortune right now of having Leo de Bever, I believe the gentleman's name is, who was very successful with the Ontario teachers' fundraising arm. Obviously, this individual has quite a degree of credentials behind him, so one would assume, based on the fact that we didn't suffer as great losses as we might have during this recessionary period, that allowing him and other

members of AIMCo a freer rein, less of an oversight leash to do the economic investments to the best of their ability, could potentially be a good thing, but at the same time, on the other side of that coin, is the notion that leaving in AIMCo's hands the corporate well-being of this province, which is $70 billion plus, is a tremendous responsibility for an organization such as this even given the credentials of the person who is currently the head of AIMCo. At whatever point that Mr. de Bever decides to move away to greener pastures, as in the notion of greenback pastures, then, you know, obviously, the search begins again.

So I'm conflicted, as I so frequently am in this Assembly, as to whether this further independence of AIMCo is a positive thing in terms of the oversight for Albertans in general in terms of the accountability and the transparency, or should there be representation on the board such that the ongoing day-to-day activities are being monitored? I'm hoping that the minister of finance, when speaking to this bill, will be able to provide me a degree of sort of fiscal security in that AIMCo will still have a sufficient tether and connection to the ministry of finance so that risky-type ventures will not occur.

8:10

While saying this, I recognize the fact that right now in Alberta we have a deficit approaching $7 billion. Also, the government has trumpeted the fact that we have between $16 billion and $17 billion in our combined capital and sustainability fund, money that, as I mentioned in my member's statement this afternoon, appears not necessarily to be utilized to the extent that it should be; in other words, being used as a buffer to provide continued investment in education and health care and children and youth services.

I guess if we're going to compare the track record of AIMCo versus the track record of the Treasury Board or the finance ministry, we would suggest that AIMCo is scoring higher marks and, therefore, deserves a greater freedom in its choice of investments. As I say, I remain in a quandary, Mr. Speaker. Hopefully, members from the government side will be able to provide me a degree of calmness with regard to: have we struck the right balance by removing the deputy minister of finance and that direct oversight as is proposed in Bill 56, the Alberta Investment Management Corporation Amendment Act, 2009?

I look forward to further debate, Mr. Speaker, and hopefully those answers will be provided. I'm sure further questions will be raised as I note my colleague the hon. Member for Calgary-Buffalo wishes to participate.

The Acting Speaker: Standing Order 29(2)(a) is available.

The hon. Member for Calgary-Buffalo.

Mr. Hehr: Thank you, Mr. Speaker. It is a privilege to be able to rise and speak generally in favour of this bill as it seeks to remove the requirement that the deputy minister of finance be a board member of AIMCo. I guess it goes back to sort of a general philosophy that I think governments should have. I think governments have a job to do; that is, to try and maximize what they see as being in the best interests of both society as well as individuals and to make rules and regulations accordingly. One of those things right now that we have set up to be managed by our government is the many pension plans and investments and a heritage trust fund that we at one time actually believed in putting money away into and is under our financial management.

I think what we have set up here with AIMCo is a good thing. It's a body of experts that are involved in the field of finance and enterprise and maximization of capital dollars that takes a very strategic bunch and a very committed group who have developed expertise in these financial instruments in order to maximize profits for Alberta. This is a good thing that the government has set up. It's a good thing that they've set it up because I don't believe governments or even us as a body would have the same expertise the members of AIMCo have. Simply put, our backgrounds are too diverse. We are pushed and pulled in too many directions to have the ability to manage funds in the nature of $70 billion, that we trust AIMCo to do. So AIMCo is in itself a good thing. I believe that over the long run it will serve the Alberta people well.

I also recognize that the Deputy Minister of Finance and Enterprise would like from time to time not to be a member or required to be a board member of AIMCo, so this is a good amendment, I think, to put in. It allows for opportunities to reduce conflicts of interest that can occur from time to time. We saw that happen just recently when there was some concern over the purchase of some natural gas outfits in Alberta. I think it's a good thing that the minister of finance and the deputy minister don't have the obligation of being there on that type of basis to alleviate those conflicts of interest when they arise and the necessity for them to take part. Like I said, I think this bill makes a sort of amount of sense from that point.

I think we will be calling for an amendment at some point in time on this legislation, but that's more into allowing more of the pension groups who are involved in providing AIMCo with their money maybe getting some representation in the AIMCo board so they have some care and control over the direction that they see their group's money invested in. I think that would be a fair and reasonable thing for the government to consider.

But at this time I'm generally happy with the direction the government has set with AIMCo. I believe that their setting up experts to handle our money is a wise and prudent thing despite the fact of the recent ups and downs in the marketplace. I believe they're going to be able to handle those better than we in this Legislature could even dream of handling.

Nevertheless, that's my story, and I'm sticking to it for now. It was a privilege to be able to speak to this tonight.

Thank you.

The Acting Speaker: Standing Order 29(2)(a) is available.

Seeing none, any other members wish to speak? The hon. Member for Edmonton-Strathcona.

Ms Notley: Thank you. It's a pleasure to be able to rise – really, this time it is briefly – to speak to Bill 56, the Alberta Investment Management Corporation Amendment Act. This is an act that at least at first glance we do have some concerns with. We're not entirely sure why it is that the government wants to remove the deputy minister, which is, of course, the primary purpose of this act. Perhaps I've missed it. I've been trying to look for the comments by the bill's sponsor when it was first introduced. I know we've received correspondence from the minister of finance, but at that time it simply said that it would now be appropriate to remove the deputy minister from the board. I'm not entirely sure why exactly it's appropriate to remove the deputy minister from the board.

It's my understanding that at this point AIMCo manages roughly $70 billion of public assets. Obviously, then, that work is extremely important to the people of Alberta. I don't question – at this point I certainly have no reason to, generally – the skill level of those people that the government has put in place. I appreciate that as the only shareholder in AIMCo the government remains in a position of some authority with respect to the body and also, of course, that they have the regulatory authority to set or manage investment strategies

or practices or procedures through the legislation. But it seems to me that the Auditor General has identified a bit of a concern around the co-ordination of work between the ministry of finance and AIMCo. I'm not entirely sure why it is that it wouldn't make sense, then, to keep the deputy minister on the board in order to ensure that that particular recommendation of the Auditor General can be addressed.

8:20

Although the overall act governing and establishing AIMCo allows for the minister to inquire into the activities of AIMCo and to ask for information and to have that information provided, it seems to me that without having a representative who reports directly to the minister about the activities of AIMCo at the board level, the minister would not necessarily be in a position to know when to ask, when to inquire, and when to exert the authority that is effectively given to her through the legislation setting up AIMCo.

It seems to me, then, that this is more about sort of symbolically crystallizing the arm's-length nature of AIMCo so that in the event that things don't go so well with AIMCo, there's an opportunity, I suppose, for the government to try and move away from responsibility associated with anything that might go wrong. We certainly saw that with respect to the decision to invest in Precision Drilling that was raised last spring, I believe it was, when in response to that the minister of finance, I believe, but it may have been the Premier, suggested that the government had no direct involvement in that decision and that we were simply going to defer to the good judgment of the board. Then, subsequently, we determined that, no, in fact the deputy minister of finance was part of that decision. Now, that may or may not make the decision right or wrong, but what it does do is that it ensures that there is a mechanism through which Albertans can hold the government accountable.

Let's remember, I mean, that we have endowment funds in that $70 billion. We have pension funds in that $70 billion. I mean, this is money which is extremely important to the people of Alberta. It would seem to me that there ought to be some mechanism of accountability, if only were the minister wanting to be sure that they have complete knowledge and oversight of everything that is occurring with that board.

We know, for instance, that the board did allow itself rather generous compensation packages very recently. The two top AIMCo executives received roughly $5 million in compensation. Now, to me that's something that I think the minister should remain knowledgeable about and should be prepared to answer Albertans for. She may well want to answer Albertans by saying that the only way you're going to get someone of this calibre is to pay them that amount of money. That may be a completely legitimate – a completely legitimate – answer. I don't know. But what I do know is that there should be enough of a relationship between those people who are accountable to the electorate and to the public of Alberta and those people that are making those kinds of decisions that an answer must be given rather than simply a position taken that: well, it's a decision made by an arm's-length board, and I have no capacity to take responsibility for any of it.

There's no question that you always have a bit of that conflict: do you want arm's length to reduce government intervention, or do you want a closer relationship to enhance accountability? It's a common concern, but I think that at this point I've not seen a compelling argument for why it is we would reduce that accountability and the need to take responsibility on the part of the government. At this point, then, we will not be supporting this bill.

Thank you.

The Acting Speaker: Standing Order 29(2)(a) is available.

Any other members wish to speak?

Hon. Minister of Finance and Enterprise, do you wish to close the debate?

[Motion carried; Bill 56 read a second time]

Bill 57
Court of Queen's Bench Amendment Act, 2009

[Adjourned debate November 3: Mr. Weadick]

The Acting Speaker: The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you very much. At first look this bill attempts to achieve to a degree what I was putting forward with my Motion 511 calling for a unified court, which was amended by the hon. Member for Battle River-Wainwright to a unified court process. What it's attempting to do is streamline the process and give similar powers. It harmonizes the process of warrant applications for telecommunications warrants, which at present may only be heard by a provincial court judge or a justice of the peace. Now these warrant applications can be made to a justice of the Court of Queen's Bench, so in theory and hopefully in practice there are more opportunities for a warrant application to be heard, which promotes the idea of a faster and more expedient form of justice.

Not being a lawyer, I do not have the understanding of some of the downsides of potentially adding another layer or level of approval. What I see at this point is that this is, as I say, attempting to achieve a more fluid justice system by granting the authority to individuals and considering that a judge is a judge is a judge regardless of which court they're overseeing.

At this point I'm stating that I believe it's a step in the right direction, and I look forward to hearing from other members of this House such as the Member for Edmonton-Strathcona, who has the legal background to be able to analyze this agreement to a greater extent. Obviously, my honoured colleague from Calgary-Buffalo, having had his background and training in law, will be able to provide greater insight either in second reading or the committee stage, and the hon. Minister of Education, for example. The hon. Member for Calgary-Nose Hill obviously has background and can further add explanation as to the importance of passing Bill 57. I look forward to hearing from my esteemed colleagues who have the legal background to provide the evidence necessary for further support for this bill.

Thank you, Mr. Speaker.

The Acting Speaker: Any other members wish to speak? The hon. Member for Edmonton-Strathcona.

Ms Notley: I am rising to support this bill primarily for two reasons, I suppose. This is a bill, which others probably have mentioned already, that will give Queen's Bench judges the authority to hear applications for the introduction of tracking devices or number recorders, and this will add to what is their current authority over wiretaps. Obviously, this would result in increased efficiency if the same adjudicator could hear all three applications as they often occur simultaneously. It doesn't make sense for them to have to go to a Queen's Bench judge in one case and a justice of the peace for the other two instances.

I'm told that the courts have been consulted on this change and, in fact, support it. I think that in most legislative amendments that govern the administration of our courts and our judiciary, that ought

to be the primary measure of whether the legislation is appropriate or not. Obviously, through it having the support of the courts, it's difficult to suggest that it ought not to be supported. In addition, this would bring Alberta in line, I understand, with Ontario, B.C., Quebec, and Saskatchewan. Again, it seems to be working in other jurisdictions, so why not do it here?

It is with those comments that we will be supporting this bill. Thank you.

8:30

The Acting Speaker: Standing Order 29(2)(a) is available. The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you. I appreciate the further sort of legal clarification that the hon. Member for Edmonton-Strathcona provided. I would ask: do you have any concerns about court hierarchy? In other words – I don't know why it would occur – in theory could a justice of the Court of Queen's Bench quash a warrant that was heard by a justice of the peace? Is there the potential for conflict instead of co-operation in terms of applying and quashing? I don't have the legal background to know this and would appreciate your interpretation.

Ms Notley: I really have to say that I do not purport to be an expert in this area. Not speaking as a lawyer, I suspect it's not actually the case that that would be a problem. I think they already can overturn it. This is really more about making sure they can make all the applications in the same forum, I believe, like all other members of the Assembly are reading the legislation. I don't think that would be a concern, hon. member.

The Acting Speaker: Standing Order 29(2)(a) is still available.

Any other members wish to speak?

[Motion carried; Bill 57 read a second time]

Government Bills and Orders
Committee of the Whole

[Mr. Mitzel in the chair]

The Deputy Chair: I'd like to call the committee to order.

Bill 48
Crown's Right of Recovery Act

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

Ms Blakeman: Thanks very much, Mr. Chairman. Just a couple of additional points that I wanted to make during this at-bat in Committee of the Whole on Bill 48, Crown's Right of Recovery Act. One of the things that I believe I heard either by the sponsor of the bill or one of the first speakers to this bill was that some of the local antitobacco groups were in favour of part 1. In fact, I had a telephone conversation with Action on Smoking and Health, and that was followed up with an e-mail in which he clarified that his organization has not offered an opinion on part 1 of this bill because, as he rightly points out, criminal justice is not his mandate. Their mandate is, you know, to eradicate smoking and the use of tobacco products in our fair province. So to have said that they were supportive of part 1 is not correct, and I now have it in writing to support that.

Of course, they at the same time supplied me and, I'm sure, every member of the House with lots of information on how everybody else is doing. British Columbia has currently got an appeal going on a court case that they, in fact, started in I think 2005 on tobacco damages and the Health Care Costs Recovery Act. You know, they were proven right when that went to the Supreme Court. The Supreme Court denied permission to appeal on August 5, 2007. New Brunswick has also gone through a similar series and in September of 2007 announced that it had lawyers that were being brought together to sue for tobacco-related illnesses on a contingency fee basis. That was filed March 13, 2008, and is ongoing. So far there are Ontario, Saskatchewan, Manitoba, Nova Scotia, and Newfoundland and Labrador who have commenced actions.

I fail to understand and have also failed to get a satisfactory explanation from the government proponents of this bill as to why they included part 1 because it was going to make what should have been clear sailing for a bill, you know, in any number of sports metaphors, a slam dunk to pass with parts 2, 3, and 4 in it. Whatever possessed them and what was the compelling argument to include part 1? We have failed to hear that argument put on this floor in a way that's at all convincing to me, anyway. Why they had to make it that difficult I don't know. I mean, fair enough; Albertans saw fit to put 70 of you people in here. I'm sure you're going to pass your own act, but the number of problems it creates, I would argue, far outweighs any solution that it was actually presenting here.

The second and related question to this is: where is the government going with this? Now, the minister of health was quoted in some newspaper articles as saying: no, no, no; it stops here. You know, we're not going to go any further than sort of chasing down criminals to recover health-related court costs. He swears that it's not going to go any further than that, and I go: well, yeah, you said that about a lot of other things that weren't going to go further, and we saw them go further. You know, there were going to be a limited number of private clinics, and there'd only be so many health care procedures that would be contracted out, and it would save us money instead of costing us 10 per cent more. There are all kinds of promises that I've heard from this government that have just turned out to be absolutely specious. Where are they going with this?

The obvious conclusion is that it's being put in place so that the government can start to pursue people for medical conditions in their life over which they may or may not have any control; you know, chasing down overeating people to pay for diabetes, denying smokers any kind of surgery or treatment for pneumonia or making them pay for the costs of that. I just think: oh, yeah; go to court and try to prove that this person's pneumonia was caused by the fact that they smoked for X number of years. What if the person has quit smoking? I mean, all I can see are a huge number of complications and an awful lot of taxpayer money being paid out to lawyers to argue this in court. Even if it's lawyers that are on the government payroll, taxpayers are still paying for this, so to me this defies logic.

The government has failed to make a compelling argument about why it would stop there. It seems very clearly to have started on a progression of things and has given me no compelling argument, other than the minister saying that it won't happen, as to why it's not going to continue on. I would like to see the business case for this. I would like to see some evidence from other jurisdictions where they have pursued this kind of thing, that this actually pays off for Albertans, that it actually doesn't cost Alberta taxpayers more money in trying to implement this than whatever costs they think they might be able to recover.

8:40

Now, the minister has made the point that, yes, of course they'll be able to recover money from criminals for health-related costs

because not all criminals are poor. True, but I tend to argue – and I bet you we could find some evidence that would tend to say that – that the smart ones are also the rich ones, and they're probably not the ones that got caught. On the other hand, the ones that weren't quite so bright are the ones that got caught, and they're probably the ones that don't have a lot of money on them. So I think there are other things at play there rather than whether they actually have money or not.

I am still waiting to hear some compelling arguments from the government as to why it has chosen to take this particular route. I think it has just created a huge mess for itself, and I don't understand why they did it, why they attached this to this particular bill and made something that should have been very straightforward and easy incredibly complicated and now, I think, slower moving.

I'll take my seat, and hopefully I will hear something from government members as to why these choices were made that would encourage me to support this bill wholeheartedly rather than with a great deal of trepidation.

Thank you.

The Deputy Chair: Any other members wish to speak? The hon. Member for Edmonton-Strathcona.

Ms Notley: Thank you. I'm pleased to be able to get up and speak again on this bill, which is a very, very unfortunate bill. It's a bill, as has already been mentioned, that includes some good things, but it includes such entirely, horrifically ill-advised things that the good things are really, truly overwhelmed.

Basically, this act would amend the Hospitals Act. It would remove certain things from the Hospitals Act and move them into the Crown's Right of Recovery Act. That's including, of course, the provision for the right of the Crown to recover costs of health care services for personal injuries that are the result of wrongful acts or omissions around negligence, medical malpractice, that kind of thing – that's already there – and a provision for the right of the Crown to charge automobile insurers for a portion of the money they make on third-party liability insurance. That's fairly simple as well.

But the other two provisions that this would add that are not in the Hospitals Act, of course, are the right to recover health care costs for injuries received in the commission of a criminal offence, section 34, and the right to recover health care costs for the wrongful acts of tobacco companies. Now, as we said more generally when we had the conversation about this in second reading, the issue of the tobacco company thing is a good one, and it's one that we fully, fully support. We absolutely support the general aim of the bill to establish a separate piece of legislation regarding the Crown's right to recover health care costs, and we would in most cases support any provision which would allow the province to sue tobacco companies.

Tobacco companies perpetrate tremendous levels of ill health on populations, and they profit from it. The degree to which our health care system is strained right now as a result of people's addiction to tobacco is quite unacceptable. One of the quickest ways to cut health care costs in our province would of course be to have tobacco no longer available to people and to reduce all of the negative implications that arise from tobacco consumption. Unfortunately, we have this very laissez-faire sort of scenario. We have people who smoke, and of course we have companies who sell to them in a way that is specifically designed to enhance the addictive nature of that particular habit. They enhance the addictive nature of smoking, and people struggle to get off the smoking, and then people are sicker, and then all people pay the costs of health care.

That is why jurisdictions across North America, at least, have pursued with varying levels of success the notion of going after tobacco companies to take some of those profits and put them back into the health care industry, as well, of course, hopefully to also discourage those very companies from engaging in a lot of the practices which enhance people's inability to stop smoking, whether it be their advertising, whether it be the enhancement of the addictive qualities of the tobacco agent regardless of how exactly people ultimately consume it. As a result we see that British Columbia, New Brunswick, Ontario have launched lawsuits against tobacco companies, and Quebec, Saskatchewan, Manitoba, Nova Scotia, and Newfoundland and Labrador have introduced legislation such as this.

This is all, as I've noted before, a result of the 2005 Supreme Court ruling that unanimously upheld the constitutionality of the first legislation in this regard, which originated in B.C. under the then NDP government. We've already talked about the reasons for this. The provisions around suing the tobacco companies have been supported by the Canadian Cancer Society and the Edmonton tobacco reduction network. We know that this is an exceptionally – exceptionally – worthwhile piece of legislation. I would desperately like to be able to vote in favour of it.

The problem is that this government has seen to attach it to a desperately offensive additional section of the legislation. It is the penultimate poison pill. They're using motherhood legislation to hide or camouflage or to otherwise sneak through this Assembly a different provision, which is as negative, I think, ultimately, to our health care system as the tobacco component of this bill is positive. That is, of course, that element of the bill that would give the government the ability to recover health care costs from criminals. I'm going to talk about that in more detail, but suffice to say I'm not a big fan of that component of the bill. It's for that reason that at this point I'd like to introduce an amendment to Bill 48.

The Deputy Chair: Hon. members, we will pause for a moment while the amendment is being distributed.

We'll call this amendment A1, moved by Edmonton-Strathcona on behalf of the Member for Edmonton-Highlands-Norwood.

Ms Notley: Thank you. What my amendment proposes to do is to strike out sections 34, 35, 36, and 37 of the bill as it currently exists. In so doing, the amendment would strike out all sections that deal with the Crown's right to make criminals pay for any health services they receive because of injuries received in the commission of a crime. We are proposing this because we object to this element of the bill.

8:50

Just to go back a little bit, the government, I suspect, has proposed this element of the bill on one part as part of their typical sort of republicanesque approach to politics, where we all pile on and sing very loudly about our efforts to be, quote, tough on crime. This is one of a series of pieces of legislation that follows along that line.

Nonetheless, this is not a piece of legislation that will bring about that outcome. Rather, it will probably have no impact on the commission of crimes. It might in fact increase crimes, and it will of course perpetuate a much bigger crime, which is the continuation of the government's efforts to undermine our public health care system. We know that the Criminal Trial Lawyers Association has come out against this provision, but we also know that others who are engaged in the business of trying to reduce crime have suggested that this piece of legislation will have no impact on crime reduction, and it may in fact result in an increase in crime.

This bill, as I believe we've stated before, effectively infringes on the principle of universality in health care. Our health care system is premised on universality. It always has been. It is one of the

principles of the Canada Health Act that medically necessary services must be provided to everyone at no cost, and the bill as it currently reads infringes that fundamental principle in a significant way.

As I have suggested before, the bill will not reduce crime. There is no reason to believe that the threat of having to pay health care bills will deter criminals from committing crimes. Indeed, we've heard absolutely nothing, not anything, from this government to suggest that this is the case. They are bringing forward this very radical piece of legislation without an iota of research, without an inkling of policy considerations that would merit it. There is actually no stated rationale, and there is nothing to support the implied rationale behind this element of the bill. So it is, I would suggest, an extremely ill-thought-out section of legislation that is simply designed to constitute political pandering, and I would suggest that ultimately it's a very amateur attempt at political pandering.

The bill will also, I would suggest, interfere quite significantly with the role of the judiciary and the long-term historical practices that we have developed in this country around how it is you assess criminal behaviour and establish appropriate penalties. In essence, what we're going to do is that once a criminal is convicted of a crime, not only are they subject to the penalty that a judge, using their expertise and their reliance on the common law, will assess based on the specific elements of the crime and the relationship of those elements of the crime to what the law says is a reasonable penalty, but in addition to doing that, we are also going to have this surprise fine, punitive fine, that gets dumped on the criminal.

For instance, we could have a criminal that marches into somebody's house and brutally assaults three or four people and in the course of doing that injures his finger, and as a result of it, when all is said and done, he is presented with a $2,000 physiotherapy bill. Conversely, we could end up with a young person who is addicted to crack cocaine who commits their first theft of an item under $300, and in the course of that they trip down the stairs in the house that they are breaking and entering into and become paralyzed from the neck down. Suddenly, that 19-year-old first-time offender, who's also very addicted to a substance, is going to be presented with a multimillion dollar fine on top of the penalty that the judge might otherwise impose. There is absolutely no rational linkage between the penalty which this criminal must pay and the crime that they have committed.

What we do, then, is we take this whole process out of the judiciary, and we subject it to the irrationality of fate, and we just go on our merry way. It is truly one of the silliest ideas I have ever seen. It really, really defies common sense, not only of people with a legal background but the common sense of people with any common sense. It's surprising to me that they would suggest moving forward on something like this.

The final issue that we have with respect to this piece of legislation, of course, is that it opens the door to a fault-based fee structure for health care services. Right now we get to recover because somebody is a criminal. Next we'll recover because somebody has been convicted of a provincial offence or a summary conviction. Next we'll recover because somebody has been fined. Next we'll recover because somebody smokes. Next we'll recover because somebody is obese. You know, it just will never end. There is no way to justify this provision without effectively accepting a presumption which automatically would lead to other fault-based allocations of health care costs to patients.

It is for this reason that I urge members of this Assembly to support our amendment and to fix what is an otherwise excellent piece of legislation, an otherwise excellent initiative on the part of the government, to accept this amendment and to subsequently remove this one small piece of intense, intense stupidity. I pause there, but I have to say it. It just is stupid from so many different angles.

So I certainly hope that members will consider supporting my very politely asked for amendment.

The Deputy Chair: The hon. Member for Calgary-Buffalo.

Mr. Hehr: Well, thank you, Mr. Chair. It is a privilege to rise and speak to the amendment moved by my friend from the third party and to comment. Just at the outset, this is a really good amendment in that what it leaves is a very good bill, the first two parts of it, in place and allows us to move ahead on being able to sue tobacco companies as well as harmonizing some legislation with our motor vehicle accident claims and situations like that. But I must also pick up where the hon. member left off, that this is really a stupid bill if we look at the part that we're really trying to pass here.

I understand the mentality of the government wishing to in fact be hard on crime or at least appear to be hard on crime. I say this as a person who has been a victim of crime. I guess at one time this may have had even some sort of appeal to me. As some of you are aware, I was injured some 18 years ago through a drive-by shooting, which is an illegal act. At some point in time, maybe briefly – this was no easy thing to go through, Mr. Chair, just to be perfectly honest. It hasn't been easy.

9:00

When I look back and I think about this legislation and what's it's trying to do, I think: does this legislation have anything to do with preventing crimes like this? I say that no, it has no bearing at all on whether it's going to impact crime. No one can point me to a study where when criminals go out and do bad things, it resonates in their minds that maybe they're going to have some added health care costs tacked on after they're out of the slammer or after they serve a term in jail or after they get caught. That has never been shown to me, and I don't think it's been shown to me because it doesn't exist.

Also, then, as a disabled person who was a victim of crime, I'd like to comment on the fact that, yeah, maybe for a short period of time this might have had some sort of appeal to me in the fact that, jeepers creepers, this guy is going to have to pay for these medical costs, which, no doubt, for an individual like me were quite extraordinary to the state, probably in excess of, when you add it all up, when everything is said and done, over a million dollars. It's probably going to be a million more by the end of the day, before I go to my eternal reward. Probably just the complications of the whole matter are going to make it vastly expensive to the state. So I think about this myself. Well, jeepers creepers, this guy who did this heinous act, this crime – and we're getting tough on it – by golly, he's going to pay for this for the rest of his life. I think about that.

Really, what are the ramifications? I have to move from myself as the individual. Well, I might see some minor personal satisfaction even though I'd hope I'd moved on from whatever bitterness occurred in that moment some 18 years ago to: what are the broader implications on society? So there I look at what bargains our society has struck. On that matter, under the Canada Health Act we have struck the bargain that no matter how rich or how poor you are, how good you are, how bad you are, how in between you are, how much you smoke, how much you drink, how much you do good on one day, how much you do bad on the next day, how well you treat your neighbour, or how well you don't treat your neighbour, you are

going to get medically necessary health care. For good or bad that is the bargain we have struck, and I think it's a fair bargain.

The other part of that bargain for society is that if you break the rules, you're going to go to jail. Okay? And if you break the rules, you will serve your time back to society by spending a time either in our provincial jail cells or in our federal jail cells. That to me has been the way we have wiped the slate clean and said: "All right. From here we're going to go on, and we're going to try to do better next time. We're going to build a society."

What we're doing right now is complicating those two principles, the first one in particular. We're starting to move down that slippery slope where it is that you, sir, are not good enough to get medical care; you, ma'am, are not good enough to get medical care. It simply interferes with things that are Canadian, that we base our values and principles on.

The second thing that I look at in this is: how about the offender? How about that gentleman who some 18 years ago shot me? How would this legislation affect him? Well, to be honest with you, like I said, I don't think anyone can point to the fact that this legislation would do anything to stop him from committing that crime. I tell you what. If anyone could point me to that, I'd get onboard this bill. I'd sign up. I'd go tell those criminal trial lawyers how necessary this is. I'd be the first one. However, we can't because we know it's nothing but rhetoric to take out and say that we're getting tough on crime with.

What we have to look at is: would this person who perpetrated the crime on me actually have stuck around in Alberta to have paid off his debt to society? Or are we maybe creating an underground economy? Maybe this guy would've said: "Well, you know, a million, 2 million bucks. That's quite a bit to pay. I feel bad for what I did, but I've kind of moved on. I've done my two years. I tell you what. I might work under the table here, or I might move to another province. I might go here, or I might go there. But this doesn't seem like something I'm going to deal with." That's one example. Another example is: what are we going to do? Have our lawyers set up a whole bureaucracy dedicated to tracking down these people, which people are going to pay back the health care costs? The bureaucracy in the keeping track of this mess; it's just bad legislation.

If this bill does pass without taking this section out, I think what will happen is the government will put it out in their flyers and say: we're getting tough on crime. I don't ever envision that this thing would take place. It simply would be ridiculous to the advancement, I think, of a decent Alberta or, actually, even a better Alberta. I'm hoping they're just using it as window dressing to say that we're getting tough on crime, because that would actually be somewhat refreshing. In a way if it makes you feel better, go ahead; go nuts and all that.

Whether we're putting this dramatically into play, I think it has serious implications for our society. First, that bargain we have struck is that health care is for everyone despite how good we are or despite how bad we are, whether we get caught doing a crime today, whether we get caught speeding tomorrow and accidentally run someone over in a crosswalk. Well, those are some difficult things. I think we're playing with fire on this legislation, I believe, for some of those reasons contained herein and some of those basic values that we've based Canada and Alberta on up to this time. I think they're worth standing up for, and I think they make us a better community and a better government and an example to other jurisdictions that tend to look to the betterment of humanity and the rebuilding of lives and that sort of stuff other than what this bill attempts to achieve.

I thank you very much for allowing me speak to this bill this evening, Mr. Chair. We'll go from there.

The Deputy Chair: The hon. Member for Lethbridge-East.

Ms Pastoor: Thank you, Mr. Chairman. I will be very brief, but I did want to get my comments on the record. I think I've already spoken before on how absolutely silly part of a section of this is, and the section that is being addressed under this amendment, I think, was the part that I thought was the silliest. In fact, I was sort of convinced it had been put in for comedy relief.

A couple of the points have been made by the previous speaker. I certainly support this amendment because I think it's almost impossible to enforce. It would cost heaven knows what to actually collect. It would create another very costly bureaucracy to administer this. It would undoubtedly have many high-priced lawyers on consulting contracts. I think that is certainly not what this province needs: another whole bureaucratic department.

I think that some of this looks like a bit of political pandering, so it would be really interesting to know who they had to appease in the government caucus to come up with this amazing idea.

I would just really like to encourage and ask the members of this House to support this amendment, which would then make Bill 48 a very, very good bill that this Legislature could be proud to pass. Thank you.

The Deputy Chair: The hon. Member for Calgary-Nose Hill.

Dr. Brown: Thank you, Mr. Chairman. I was just wondering if the hon. Member for Calgary-Buffalo, in view of his objections to the bill, which he articulated, would have a similar difficulty with the long-standing practice of the province of Alberta for subrogated claims for hospitals when someone has caused a motor vehicle accident?

9:10

Mr. Hehr: I understand the question, and generally there's insurance involved in those things. That's why it has been set up there. Through the insurance company and through insurance practices it has been set up that way. Right now our criminal justice system as well as our Canada Health Act is not set up that way. What you're doing is two different things. I believe, you know, it's easy to draw that comparison, but they're not. They're based on an insurance principle that we have on subrogated claims, and it's not the other way around. So I would say that messing with this principle is something we should not be doing.

Dr. Brown: In essence, you're requiring the guilty party – in this case the one that is guilty of a tort in having caused, you know, an accident – to pay the hospital claim.

The Deputy Chair: Hon. member, through the chair.

The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you very much. In speaking in support of the amendment, what the hon. Member for Edmonton-Strathcona is trying to do is separate the Dr. Jekyll from the Mr. Hyde part of this particular bill. She has also pointed out – and several other people have used adjectives talking about it – the hypocrisy that is associated with this bill. What's she's trying to do is save the baby and toss out the bathwater.

The concern that just very briefly I want to say is that suing tobacco companies makes absolute sense except as the minister of finance pointed out during question period, when in an answer she indicated that Alberta has small investments in tobacco. Well, to that, Mr. Chair, I would say that's like being a little bit pregnant. If

you have interests in tobacco, then, as was pointed out earlier, you're suing yourself. That part of the legislation won't be cured by this amendment, but the amendment does remove the portion that is strictly based on getting tough on crime, being vindictive. The person is already injured, so let's hit him a couple of times with a shovel or the take-no-prisoners attitude. As the hon. Member for Calgary-Buffalo pointed out, we have universal laws, a universal-access right to treatment.

I know, Mr. Chair, that the hon. Member for Edmonton-Riverview has a keen desire to participate in the debate on Bill 48. I'm sure he would find this amendment intriguing; therefore, I would like to at this time adjourn debate on the amendment of Bill 48.

[Motion to adjourn debate carried]

Bill 51
Miscellaneous Statutes Amendment Act, 2009

The Deputy Chair: Are there any comments, questions, or amendments that are offered with respect to this bill?

Hon. Members: Question.

[The clauses of Bill 51 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Deputy Chair: Opposed? That's carried.

Bill 54
Personal Information Protection Amendment Act, 2009

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

Ms Blakeman: Thanks very much, Mr. Chairman, for the opportunity to continue debate in Committee of the Whole for Bill 54, the Personal Information Protection Amendment Act, 2009. I've gone back and tried to read the notes that I took and the *Hansard* of the committee meetings because I sat on the review committee from which flowed these changes. As I look at it, it appears that out of the various particular issues that we dealt with – that actually were kind of prechosen because there was a workbook that was distributed, and it had particular questions that people were encouraged to answer, and they did, of course. So the agenda is somewhat set by the choices that are made in preparing the discussion document, or discussion guide, I think they call it.

Nonetheless, we dealt with a number of things, like the idea of the business product or the work product, which, in fact, is reflected here in the legislation; some clarifications on behalf of the Privacy Commissioner which would allow him to not have to do a complete investigation. You know, he could refuse to investigate something. You need to allow that kind of administrative discretion in some cases. We have to believe we've hired good people who have good legislation to work with to help them make those decisions.

We needed to deal with the PATRIOT Act in the U.S. and the fact that any time a multinational corporation received personal information from Canadians or from Albertans, more specifically, it went into their parent company in the States, and they could then use that information the way they wanted to, not subject to our laws. There's a requirement now that if you are collecting personal information and you know that it could end up in a U.S. multinational office, the Alberta recipient of the personal information takes the steps to make sure that the information is not passed on or that the individual knows that it will be passed on, whichever is appropriate there.

In fact, the one area that seems not to have come out in any way, shape, or form in the amending act was bringing the not-for-profit, voluntary, charitable sector completely under the scope of PIPA. I remember we had a number of discussions about this because they were half in and half out. If they had a commercial product or a commercial venture, the NGO sector – let me call it that as a shorter way – would get captured under PIPA because the part of it that operated as a commercial venture would be covered or would have to adhere to the regulations, but the rest of the organization may not. So you could have a church that ran a brunch on Sundays in its basement and charged money for it. Well, that part of it and personal information around that would be included, but the rest of the activities would not.

We were very concerned as a committee that we not tax the capacity of not-for-profits in having to adhere to the requirements of PIPA, knowing that there were a lot of not-for-profits in Alberta. I think there are, like, 19,000 of them, and probably 8,000 of them operate without full-time staff. Expecting that somehow a volunteer-based organization is going to be able to understand and adhere to all of this can be a bit of a stretch. Nonetheless, as we look at the fact that that very organization, even though it may have no staff, may be collecting personal information about Albertans, would we expect that it will adhere to how it treats that personal information? The bottom line is yes. The Privacy Commissioner has also indicated his expectation that the not-for-profits would be brought under PIPA and his displeasure that they were not.

9:20

I had asked specifically that certain not-for-profits would be brought in to speak to the committee, so we had groups like the chamber of voluntary organizations, the community leagues, and a few other groups like that come in. Really, what they said to us was: "Either way, just make it consistent because right now it's really hard for us to know whether we're in or whether we're out and to figure that out. Again, we're just trying to provide our service. We're just trying to put on, you know, yoga for kids and skating for adults. We're trying to do our activity, not worry about all these other things. So just be clear. Either tell us we're in, we're consistently in, or tell us we're out, and we're all out. But this, 'Well, you're in if you engage in this kind of activity but not in that kind of activity' is, frankly, really confusing."

The committee in the end – and we wrestled with this a lot – had recommended that they all be brought in just to provide that greater clarity and consistency. In recognizing that capacity issue, we had recommended that there be a phase-in of this and that there should be some monetary assistance available to organizations to ease their way into that compliance.

Maybe that's the reason why the government decided not to include it as they weren't interested in offering the financial assistance to build the capacity in these organizations to do this. As a result we have maintained an inconsistent application to the not-for-profits, we have maintained a confusion for them on how they are supposed to be behaving, and we've left a lot of employees and volunteers and other Albertans that have an interaction with those organizations also with their personal information and the protection of it not covered under this legislation. I think that continues to be an issue, and I think it's something that we need to hear from the

government as to why that choice was made in a more thorough way than what we've heard thus far. I look forward to the sponsor being able to give some explanation on that.

Another question that I had as I started to go through this. This is sort of a technical question, but as I look at the beginning of the bill, under the definitions section – and, of course, that's at the front of every bill; it's an important part of every bill because it tells us how we understand the rest of the bill – there's a part that is confusing me. Usually you would have something flow logically. I found something that doesn't flow logically to me.

When you look at the definitions, under section 1(m) in the existing act, which appear on pages 4 and 5 of the printed version, you have a discussion there about record and the definition of a record, meaning "a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or any other form," et cetera, et cetera. But under the act what's being added under that section which starts talking about a record is something that is, to my eye, unrelated. I'd like an explanation of that.

What it starts talking about adding under this clause that talks about a record is (m.1) "regulation of Alberta," meaning a regulation as defined in the Regulations Act, (m.2) would be a regulation of Canada, and (m.3) a service provider. What does that have to do with records? It has nothing to do with records. You're amalgamating two things together that are totally unrelated in a definitions section, which I think is creating confusion. I'd like an explanation as to why that's happened because (m.3) as proposed in the amending act, appearing on page 3 – and for the purposes of people following along, this is actually section 2(vi) – still under the record section, adds in:

> "Service provider" means any organization, including, without limitation, a parent corporation, subsidiary, affiliate, contractor or subcontractor, that, directly or indirectly, provides a service for or on behalf of another organization.

Are we somehow supposed to link that this is about records coming from regulations of Alberta, regulations of Canada, and service providers? This is not logical to me, and I'm just wondering if this was meant to be created in a different area, that it was meant to create a completely different section, or if it was meant to flow under the records section. If I could get that answered, I'd appreciate it.

Everything else under that section looks fine to me. Then it just flows on through the rest of the amending act, essentially incorporating the details of what's needed to implement the decisions that were made by the committee. As I say, the decisions were arrived at after a great deal of discussion, and they're all pretty necessary, I believe. I talked about the PATRIOT Act already. There was also a section to deal with administration of pensions without having to chase the person down and find out about them and deal with them directly. That would be an issue where the notification clause or the disclosure clause is being exempted to allow someone to get the work done.

There were also some small things like allowing the business title to be attached. This was around that whole work product discussion. The organization could give the position name or the title when communicating with a person about whom they have a privacy concern. They'd be saying, "Please, you need to speak to the district manager" rather than giving the individual's name, and that wasn't a possibility before.

The preparation of audits and audit-related amendments, really, to allow organizations to collect personal information without consent in the case of former employees as well as current and prospective employees. I never liked those sections because doing it without consent, I think, flies in the face of protection of personal information, but you can see that at a certain point it is very difficult to get that consent if you're trying to, you know, deal with old files from former employees and things like that. If you can't find them, you've stuck that business in an untenable position because they can't get rid of this stuff. They can't do anything with it because they can't get the permission to do it from a long-gone employee. So you can see that, you know, in trying to kind of take the red tape out of this and make it possible to implement it, we've had to forgo some of the protections that people like me would prefer to see in there, but I recognize the sort of reality of getting the work done.

Some of the other things you've heard other people talk about, the security breaches and the requirement to disclose a number of things, as I've said, for the commissioner. I was okay with everything else that was included in this act, and I spent a lot of time on it.

Those were really my biggest concerns around it, the reasons for not including the not-for-profit organizations and that very strange section where we're including a whole bunch of disparate elements under that definition of records, which simply did not make sense to me.

Having sort of done that on a word-by-word, clause-by-clause basis, I appreciate the opportunity to do that in Committee of the Whole on Bill 54. Thank you.

The Deputy Chair: The hon. Member for Calgary-Varsity.

Mr. Chase: Thank you very much. I just wanted to offer my thanks to the hon. Member for Edmonton-Centre and to the all-party standing policy committee that has done so much of the work in preparation for Bill 54. That goes to show the functionality and the importance of the all-party committee. The hon. Member for Edmonton-Centre pointed out that all but one of the nine recommendations were accepted by the mover and organizer of this bill. She also pointed out the need to bring all not-for-profit organizations under the same umbrella.

9:30

I recall a circumstance which, I believe, is related to this particular bill, where the War Amps were prevented for a period of almost two years from receiving the information from the drivers' registries. The War Amps, we all know, do wonderful work, and their main fundraiser is through the key tag promotion. I would hate to think that these very worthwhile not-for-profit organizations would be denied this type of information. They're not into information sharing. They're into the notion of doing good work for children and adults who have suffered amputations.

The hon. Member for Edmonton-Centre also pointed out some of the discrepancies with regard to parts of the bill; for example, the records with regard to service providers and nonprofit organizations somehow being thrown into the mix and not flowing logically. Again, without going into too much detail, she expressed a desire for clarification, which I hope the hon. mover of this bill will provide or possibly a committee member who had second thoughts about the ninth of the nine recommendations that were put forward.

With regard to the protection of information there are all kinds of self-checks, to a degree, that we can look after ourselves. For example, we get into sort of a holidayish mood when we're going to a boat show or a home renovation show, and we fill out the little free draw form for that wonderful basket of jellies. What happens? Three weeks later we're getting calls for time shares or, you know, some Fabutan product that is going to make us that more attractive to our constituents. To a degree a little bit of self-awareness can protect us.

When it comes to larger issues of information protection and information sharing, that's where we have to be careful. Sometimes that information sharing is based on a criminal circumstance, where a computer has been hacked or an uncoded, unencrypted health record circumstance has found its way into the wrong hands. That's a different matter, but it does lend credence to the fact that we have to believe that our personal information is being protected, and that's part of what's happening within this bill, recognizing that every three years it goes back to an all-party committee for further improvements. This would be the sixth opportunity for a revision.

Again, I think the hon. Member for Edmonton-Centre has pointed out the primarily positive aspects and intents of this bill, and we look forward to the clarifications surrounding those areas that have not been fully explained.

With that, Mr. Chair, I'll take my seat and look forward to further qualification.

The Deputy Chair: Any other members wish to speak? The hon. Member for Edmonton-Strathcona.

Ms Notley: Thank you. It is a pleasure to rise to speak in more detail about this rather extensive bill. Unfortunately, I was not around when the committee reviewed this bill, so I'm not as familiar with it as some. I have to say that I did struggle somewhat trying to plow through this rather extensive bill with a limited amount of time at my disposal to do that. Nonetheless, I'm going to mostly work off the bill itself, having just gone through it to try to figure out what it says. Because we didn't actually ultimately get a whole sort of three-column document or anything in our briefing, I'm just going through that now.

Of course, the sponsor of the bill did indicate when introducing the bill that although it included some elements that had been recommended through the committee that reviewed the act, it also included some additional elements. I'm going to try to cross-reference between them, but if I don't quite do that, I apologize.

There are many things within the bill which are worth while, and I'll try to point those out as I go. There are some others about which I have some concerns and then still others about which I have some questions. I suppose that, just to start, one key point which everyone probably has mentioned, because I think it was identified as a deficiency by the Privacy Commissioner, is the failure of this bill to bring nonprofit organizations into its scope, so they are still not compelled to adhere to the privacy and protection of privacy provisions and protection which this bill attempts to give to regular citizens in their private dealings throughout the province.

Of course, it is difficult. I appreciate that there are a lot of nonprofits that will struggle to bring themselves into compliance with this piece of legislation. Conversely, however, we have a government that has really excelled in downloading very significant, impactful services onto the nonprofit sector. While they say that they can do that without compromising service, to then suggest that we can't provide to the recipients of those services the kinds of protection that a bill like this would provide because those nonprofits are too stretched kind of runs against the notion that it's okay to download so many services onto the nonprofit sector.

You know, either the nonprofits are properly funded to provide the kinds of services that they do or they're not. Then the question becomes: at what point ought these important objectives that are being performed by some of these nonprofits, which remain outside the scope of this act, be performed by those particular groups? While I, too, see the concern that they would have about complying with the act, I think that if the government truly thinks that this bill and the protection it provides are important, then we ought to be considering providing the resources necessary to allow those nonprofits to come into compliance with the act and to provide adequate protection to the people whom they come into contact with.

Another concern that I have that is included in this act but which does not appear to have been covered in the review that was conducted by the committee is the way the act proposes to treat information that employers hold about employees once that employment contract is terminated. I didn't see any mention of that in the committee recommendations. I may have misread it. I will say that I have some very, very significant concerns that the employee remains in a position of having fewer rights to control the employers' collection, use, and disclosure of their private information once that relationship has terminated.

That's particularly the case because often the employer will be using that information in matters where the employee and the employer are at loggerheads, or alternatively they'll be using it with respect to the administration of benefit plans or the administration of long-term disability or disability plans. I will talk about that later on, but I have a very serious concern about that because I've spent far too much time watching how insurance companies as well as employers expand the scope of the information, that they believe they are entitled to, in order to advance a certain position.

9:40

There are, frankly, incidents in the system where employees are exploited or they have their rights compromised by the actions of either the employer or the insurance company as a result of them exploiting their access to personal information that ought to be within the control of the employee. This change, by changing the definition of employee and extending it to that posttermination relationship, is something I have a very major concern with.

Section 5 in this bill enhances that concern as it assumes that there will be deemed consent for insurance purposes. Well, for insurance purposes includes contesting a claim. For insurance purposes includes challenging medical information and rustling up information that ought not to be used for that in a way that the applicant would never consent to or that the recipient of the benefits would never consent to. I have a tremendous concern that we are once again creating a second-class citizen. If you're a contractor, when that contract ends, the exchange of information needs to be managed in accordance with this piece of legislation, but if you're an employee, your employer has, apparently, an unending access or certainly an enhanced access to your private information as a result of the way this legislation is crafted.

I appreciate that those who were sitting on the committee identified that it's "business practice" of insurance companies, but I also appreciate that the regular business practice of insurance companies is often simply not acceptable and is often challenged in the courts and then has to change. I don't know that we necessarily should use insurance company regular business practice as a guide for developing legislation which is otherwise supposed to protect the rights of individuals against inappropriate collection, use, and disclosure of their personal information.

Section 8 of the bill is a bit of a concern as well. It expands the ability of an organization to collect, use, and disclose information without consent beyond that situation where a statute or regulation requires that collection, use, or disclosure to a situation where municipal bylaws and professional regulatory instruments would also require that disclosure. I'm not exactly sure where that came from. That didn't appear to come from the committee although maybe it did, but again it does just expand, generally speaking, the opportunities for information to be collected without asking the person for consent. Of course, every time you expand that, we have

concerns because the idea is that people are supposed to be able to consent to the collection, use, and disclosure of their personal information.

The amendments under section 17 of the bill. I'm not sure what this means, to be quite honest. It appears that when a person is asking for an organization to provide to them personal information held by the organization about the person asking, now instead of saying, "I'd like you to provide me with copies of this information that you have," you now have to say to them, "I'd like you to provide me with all information that you have in this record or that record." I'm not entirely sure whether this will end up being another barrier to a person being able to get access to the information that an organization holds about them if they are unable to specifically identify the record in which the information exists. That's simply a question.

Section 19(a) in the bill I think is a good change. That's where an organization refuses to respond to a request by somebody looking for information. At a certain point that refusal to respond is deemed to be a refusal overall as opposed to making a person wait forever and ever and ever only to have the person say: no, we don't want to give you this information. So that's a good thing.

I'm less excited about section 19(b), which seems to limit the ability of a person to request a review of an organization's refusal to excuse access fees in the event that the person cannot afford them or whatever the circumstances are where they've requested that the fees for getting access to the information be waived. So that's a bit of a not-as-good thing. I'm not sure what the rationale for that was.

Section 15. This is really a question that I have. It appears to me that section 24 of the current act is amended to limit an organization's obligation to provide information about the use or the purpose of the information that's collected where it's not in the custody and control of the organization. While I can see that it would be difficult to give access, it would seem to me that you would still have to know the use and the purpose for that information. So I am curious about what the rationale is behind that.

Section 23 of the bill is a good thing because it does limit slightly the types of items where fees can be charged, in particular if a person contacts an organization and asks, "Can you please tell me who has looked at my personal information?" It used to be that the organization could charge for that. Under this amendment they can't. That's a good thing.

Section 24. A little concerned about that one. Section 24 of the bill qualifies what was previously an unqualified obligation to maintain the accuracy of the information relating to a person. That obligation, of course, existed on the part of the organization that held the personal information. Now that obligation has been qualified with the use of "reasonable" effort to keep that information accurate. Again, this is something that was identified when PIPA was first brought in. One of the reasons many people suggested that PIPA was not actually an adequate replacement for the federal PIPEDA was because it was overflowing with the use of qualifiers like "reasonable" and things like that so that it seemed that there was a lot of wiggle room for organizations to get out of their obligations under the act.

Section 25 is a good thing, and I know that it was promoted as such by the government with respect to this bill. That's the section of the act which requires notification of unauthorized access to personal information that's held by an organization. The concern I have about that: while that is excellent, again, the qualifying language in this provision is really quite something. They have to give notification of "unauthorized access" but only where a "reasonable person" would conclude that there was a "real risk of significant harm." So you've got three qualifiers there, which probably is going to reduce the amount of notification by a good 50 per cent, if not more.

I'm not entirely sure why it is that if there was an unauthorized access to somebody's personal information, it just wouldn't be a no-brainer that you would give notice to that person that their personal information had been breached, that their privacy had been breached. I'm not sure why we have to assess whether the harm that would come to them is significant, and I'm not sure why we would have to assess whether the risk was real or superficial or delusional. I don't even know how exactly you would assess what "real risk" means.

Section 26 is a good thing. It appears to actually require organizations to dispose of information at a certain point, and that is good.

9:50

Section 34 is a provision which I have great concerns with. It's a provision which actually looks a lot like what we have seen in other pieces of legislation that this government has brought forward where there is any kind of internal review, investigation, and complaint process. It seems to be standard now that the government wants to give the administrative body the complete discretion to simply decide that the person filing the complaint is vexatious or frivolous or a whack job or taking up too much of their time or annoying or whatever, so they don't have to investigate. They don't have to receive the complaint. They don't need to review it. I have a real problem with that. I have a problem with that in the context of the adult guardianship act, and I believe there was another act that's been through here in the last year and a half where that same provision was put in place. I think that that's really quite arbitrary.

If you're going to put in place a complaints and investigation process, then the person should be able to make the complaint and the investigation, and then it should be adjudicated accordingly. Particularly, in this case it's not simply limited to where the commissioner thinks it's vexatious or frivolous; it's also where "circumstances warrant." Well, I would really love to know what that means. Does that mean, "I don't have enough people on staff to investigate this, and therefore the circumstances warrant that I will not pursue your complaint; I will not investigate your complaint"? I mean, that language is, in my view, quite unacceptable because we don't know what the criteria are for where circumstances warrant and where the complaint procedure under this legislation would then be stopped and withheld from citizens of the province. So that is a concern.

I think that's pretty much most of it, again, having really just flipped through the bill as quickly as I could this afternoon to figure out what was going on in it. As I said, some good additions to the bill but also some areas that we are concerned about, some omissions that we are concerned about, and also the addition of qualifiers to rights within a piece of legislation which, relative to its federal counterpart, is already quite qualified and already allows for a tremendous amount of flexibility on the part of most organizations relative to the federal standards.

I look forward to hearing from the sponsor of the bill with respect to some of the questions that I've put forward. Thank you.

The Deputy Chair: The hon. Member for Edmonton-Decore.

Mrs. Sarich: Thank you very much, Mr. Speaker. Thank you for the opportunity to say a few words about the Personal Information Protection Amendment Act, 2009. In earlier comments we spoke about the importance of informing customers when their personal information may be processed outside of Canada. I would like to now move to another privacy protection point which is new to the act, specifically the notification of individuals when a significant security breach has occurred.

The loss of customer or employee data can have serious consequences for individuals, ranging from humiliation and anxiety to financial loss, identity fraud, and other criminal acts. Requiring businesses to disclose a significant security breach will allow affected individuals to take steps to protect themselves from further harm. This amendment demonstrates to Albertans that protection of personal information is a matter of great concern to this government.

The Personal Information Protection Amendment Act will strike a really great balance between the protection of individuals from harm and protection for businesses from undue economic burdens. The requirement to report is not automatic. Only a breach that meets a certain threshold will have to be reported to the commissioner. Then the commissioner will decide whether affected individuals have received adequate notification and also can order remedial measures if needed. More importantly, reporting is mandatory. Failing to report to the commissioner a breach that meets the threshold is an offence under the act.

I feel that this amendment would go a long way to increase public confidence in doing business within Alberta organizations, and I appreciate the opportunity to put forward additional comments on this matter. Thank you.

The Deputy Chair: Any other members wish to speak?

Hon. Members: Question.

[The clauses of Bill 54 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Deputy Chair: Opposed? That is carried

Bill 55
Senatorial Selection Amendment Act, 2009

The Deputy Chair: Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Minister of International and Intergovernmental Relations.

Mr. Webber: Thank you, Mr. Chairman, and thank you to all the hon. members for their comments and suggestions and debate on Bill 55. Now, I heard voices of support for the bill, and I am certainly pleased about that. As well, I heard voices of disagreement, which I would like to address today.

The hon. Member for Edmonton-Centre and the hon. Member for Edmonton-Riverview both suggested that what Canada really needs is comprehensive Senate reform, and I absolutely agree. Alberta has been committed to comprehensive Senate reform for over a quarter of a century. We want a Senate that is elected, we want a Senate with equal provincial representation, and we want a Senate with effective powers to fulfill its mandate of representing provincial interests.

We recognize that Alberta cannot accomplish these changes alone. These are fundamental reforms that would impact the lives of all Canadians. But abandoning the democratic principle because change will be difficult is not the Alberta way. Alberta is proud to do our part and continue the efforts to reform the Canadian Senate so that all Canadians can benefit from a democratic upper Chamber.

It has been mentioned several times now that our legislation has been making an impact. So far two elected Senate nominees from Alberta have been appointed to the Senate. In addition, the federal government has expressed support for our provincial Senate nominee process and affirmed the Prime Minister's commitment to continue appointing Alberta's elected nominees. As well, our legislation has served as a model for Senate reform efforts in other provinces, including Saskatchewan, which has already passed its Senate Nominee Election Act.

Further, I'd like to address the comments made by the hon. Member for Edmonton-Highlands-Norwood, who suggested that we should advocate for abolishing the Senate altogether. Mr. Chairman, the Senate is an important part of our parliamentary democracy and an important part of our country's heritage. Appropriately reformed, it could serve a vital role in representing provincial interests within the federal legislative system. Rather than giving up on the Senate, we strive to improve it so it can better serve all Canadians. I'll repeat again: Albertans want Senators who are accountable, and Alberta wants a Senate that appropriately reflects the federal character of our country.

The hon. member also raised a concern regarding the costs of Senate nominee elections held concurrently with municipal elections. I would like to emphasize that the legislation in question simply provides the legal framework to enable Senate nominee elections. The legislation does not mandate the timing of the future elections. However, in response to the hon. member's concern, I would refer him to Alberta regulation 118/98, which governs grants to municipalities to pay the costs of conducting a vote. Also, I would refer the hon. member to the report of the Chief Electoral Officer on the Senate nominee election held in 1998, the last Senate nominee election held concurrently with a municipal election. Page 79 notes that grants to municipalities totalled nearly $3.2 million to cover election expenses.

Mr. Chairman, we recognize that Senate reform will not come overnight. Although some members across the floor suggest that with the Senatorial Selection Act we have somehow trimmed the sails and are riding the wave, quite the opposite is true, and I think the progress we have seen so far with our legislation speaks for itself.

Again, we stand firm on our commitments to defend Albertans' democratic rights and to ensure the voice of our province is heard in the Senate. Thank you, Mr. Chairman.

10:00

The Deputy Chair: The hon. Member for Lethbridge-East.

Ms Pastoor: Thank you, Mr. Chair. I'll just be very brief. I think that the Minister of International and Intergovernmental Relations was quite clear in what he was trying to achieve with this bill. I might point out that it's his first bill as a minister, so congratulations to him for that.

This bill as it stands, really, is quite innocuous. All this bill is asking for: it just simply extends the life of the Senatorial Selection Act. It doesn't curtail any further discussions on what people think should happen to the Senate: Senate, no Senate; elect, not elect. It has nothing to do with that. All it is is buying time for when and if those solid discussions would take place because, as the minister has clearly pointed out, part of this is constitutional. It would take forever to change unless they do it within certain ways in each province.

I'm asking for the support of the House for this bill, and we can save the discussions on the other items for another day.

The Deputy Chair: Does anyone else wish to speak? The hon. Member for Edmonton-Strathcona.

Ms Notley: Thank you. It's a pleasure to be able to rise to speak to this rather entertaining bill. Not surprisingly, I'll be parroting the general opinion previously offered by the Member for Edmonton-Highlands-Norwood in that this is a piece of legislation that we can't support because, quite frankly, it just provides a foundation to continue with what is currently a very ineffective system on the federal level.

As has been previously stated, our view is simply that the Senate should be abolished. It is not something that reflects the democratic makeup of our country. The historical rationale behind appointing a Senate has long since dissipated in terms of sort of the historical political concerns that underlay the initial construction of the Senate. The current elements of the Senate that we would effectively be promoting and encouraging the continuation of are, in my view, quite unacceptable.

Whether we elect our Senators or whether we have elections where the government chooses to appoint our Senators, we're still dealing with the current situation, which is that the Senate itself does not reflect the national population distribution in that, you know, Alberta has six Senate seats, and New Brunswick, with about one-fifth of Alberta's population, has 10 seats. Eligibility for appointment in the Senate is still based in part on property ownership, and once appointed, Senators just get to hang around there until 75. Whether we have this legislation or do not have this legislation, that's exactly what's going to happen.

Having had this legislation, we've actually, if anything, encouraged the continuation of the Senate. We've encouraged buy-in to what is a fundamentally antidemocratic institution.

You know, this was something that came up originally as a means to make a political point when there were substantive discussions around Senate reform a long, long time ago. There have been no meaningful discussions around Senate reform for, I would suggest, about a decade at least. This piece of legislation will simply give credence to what continues to be a dysfunctional system and one that is costly and one that has long since outlived its purpose. The bill has outlived the purpose, the process in Alberta has outlived the purpose, and frankly the Senate has outlived its purpose. For that reason, we cannot support the bill.

The Deputy Chair: Any other members wish to speak?

Hon. Members: Question.

[The clauses of Bill 55 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Deputy Chair: Opposed? That's carried.

The hon. Deputy Government House Leader.

Mr. Renner: Thank you, Mr. Chairman. I move that the committee now rise and report bills 51, 54, and 55 and report progress on 48.

[Motion carried]

[Mr. Mitzel in the chair]

The Acting Speaker: The hon. Member for Calgary-Hays.

Mr. Johnston: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration certain bills. The committee reports the following bills: Bill 51, Bill 54, and Bill 55. The committee reports progress on the following bill: Bill 48. I wish to table copies of all amendments considered by Committee of the Whole on this date for the official records of the Assembly.

The Acting Speaker: Does the Assembly concur with the report?

Hon. Members: Concur.

The Acting Speaker: Opposed? So ordered.

Government Bills and Orders
Third Reading

Bill 46
Gunshot and Stab Wound Mandatory Disclosure Act

The Acting Speaker: The hon. Member for Strathcona.

Mr. Quest: Thank you, Mr. Speaker. I'd like to provide a brief summary of Bill 46, the Gunshot and Stab Wound Mandatory Disclosure Act. This act makes it mandatory for health care facilities or emergency medical technicians who treat gunshot or stab wounds to disclose to police the injured person's name, type of injury, and location of treatment.

Mr. Speaker, I move third reading of Bill 46, the Gunshot and Stab Wound Mandatory Disclosure Act.

The Acting Speaker: Any other members wish to speak? The hon. Member for Calgary-Buffalo.

Mr. Hehr: Well, thank you very much, Mr. Speaker. It gives me great pride to stand up in support of this bill here tonight. It is one of those bills that really is a little bit contentious as it's never an easy balance when we infringe sometimes on some of those privileges that we've had here in Canada, I guess. Some of those that we have taken for granted are, for instance, when we tell our doctor something or when we tell emergency staff. But Bill 46, notwithstanding those reservations, tries to strike a balance in the situation where the general public could be in fear of someone who has perhaps shot a person or may be out at large or whatever the deal may be. It strikes a balance in that only a limited amount of privileged information is shared with the officer, and that officer can go about his business.

As mentioned in both second reading and Committee of the Whole stage, I asked the Minister of Justice and possibly the minister of health to monitor this for possibly whether it is interfering with health care treatment and whether there are problems in the bill going forward. Right now I think it does strike that balance on a fair basis going forward on what we'll continue to monitor in Alberta.

I thank you for allowing me to speak on the bill, and with that, we'll hear some other speakers.

10:10

The Acting Speaker: Do any other members wish to speak? The hon. Member for Edmonton-Strathcona.

Ms Notley: Thank you. It's a pleasure to be able to rise to speak to this piece of legislation. Fulfilling my title as opposition member, of course, I think I'll have to get up and be the opposing voice on this one. I say that with some hesitance because I do appreciate that there are some worthwhile objectives that are being pursued in this bill, and I also understand the degree to which there is already a

situation where health care professionals are often required to report things by law which would otherwise violate patient-doctor privilege. For instance, child abuse is one example, but there are other examples. I appreciate that there is merit to that. In this case were the bill constructed a little bit differently, I might even be convinced to support this bill. Unfortunately, I'm not convinced that this bill has been constructed in quite the best way that it could have been.

Basically, the bill suggests that the health care professional must report any other information that may be required by the regulations. This reflects a common practice of this government to move everything out of legislation and into regulation. This is a significant thing because we don't know exactly what kind of additional information might have to be reported to the police about a particular person.

Of course, the thing of it is that we're often talking about victims here, so we are looking at victims and we're saying we must automatically contact the police here, we must provide them with this information, and we're also going to require health care professionals to provide other information about the victim to the police that we're not going to talk about in the Assembly. So that is a concern. This government, when it comes to anticrime legislation – because it's so popular to be anticrime, we sometimes take a great big huge mallet to hammer in the little tack, and we don't figure out whether there might be a slightly less blunt tool to get to the same objective, an objective which, I've stated before, has merit but one that has to be addressed carefully because we are balancing very important rights against each other.

It's also a concern, frankly, that this bill appears to have been brought into play without adequate consultation with the College of Physicians and Surgeons, the College of Paramedics, or the AMA, and we've heard them express concerns about this bill and the position that this would put them in. Again, I would be much more inclined to support this bill if I knew that it had gone through consultation with those organizations and it had their endorsement.

The Information and Privacy Commissioner has also expressed concerns about the bill and the degree to which it might interfere with the provision of emergency medical care and, again, wanting the government's piece of legislation to clearly state what information would be provided because we are talking about impinging on a fundamental right, the right to have the relationship between the doctor and the patient compromised for a larger public purpose.

When you're going to do that, you should stipulate very clearly how broadly that right will be compromised and in what circumstances and, specifically, how it will be compromised. To say, "Oh, we're going to compromise it depending on how we write the regulation at some point in the future that you're never going to know about," well, is just not responsible governance when you're balancing those two sets of rights. We just had a government member get up and talk about how much this government values protecting people's privacy, yet now what we're doing is moving into a situation like this, where we've not really thought out very clearly how to balance these competing and both worthwhile objectives.

So, finally, I do have a concern about what this law might do to the mentally ill and, particularly, those who may have attempted suicide. I appreciate that the legislation tries to deal with that with respect to stab wounds, but it does not deal with that with respect to gun wounds. Once again, that whole thing there – the mental illness, the attempted suicide, the treatment that came before and after that – potentially may be reported to the police at great length because, again, exactly what is reported to the police is not clearly limited in this piece of legislation.

So I appreciate the objectives, and I'm not opposed to the objectives. I just think that the tool in this case is not a very refined one and that we could do better. Until such time as we do, we can't support this bill.

Thank you.

The Acting Speaker: The hon. Member for Edmonton-Centre.

Ms Blakeman: Thanks very much, Mr. Speaker. I was in on part of the development of this, unfortunately, because it flowed out of the health information review that was done in the early part of this decade, let me put it that way. I don't remember the exact date. Maybe 2003. At the time there was a presentation from several of the large urban police forces that they wanted a clause inserted into the Health Information Act. They felt that it was urgent that they be able to compel medical personnel to alert the police force and, actually, to allow the police force to sort of troll through the hospital wards looking for people. I really objected to that at the time because I felt it wasn't the job of health professionals to enable the police officers who, you know, hadn't hit their quota for the month to wander up and down the halls looking for people who would match outstanding warrants for particular problems.

It was put to us that, you know, there was urgency for this. I said: what urgency? They're not in hot pursuit. If they were, there's legislation to allow them to take certain actions. They're clearly not looking for children that are at risk, because there's legislation that would cover that. They're also not looking for seniors who are at risk, because, again, there was legislation that would cover that. The argument was: well, you know, we get these bad guys, and they end up in the hospital, and we need to be able to find out whether they've committed crimes, and there are other people, perhaps, who might be in need to track this down. And I said: well, then do what other jurisdictions have done and actually bring in a gunshot and stab wound act which would give clear direction as to what was expected of medical personnel because you are changing their relationship. Frankly, we don't train our medical personnel with a cop's checklist of what kind of information and observations they're supposed to be making about people. We train them to identify and triage the difficulty of a particular medical problem and to pursue treatment for that.

The Member for Edmonton-Strathcona is correct. The bill did go partway towards what I had expected it to do but fails to give us the clarity that we were seeking. You know, if we're going to start crossing and blurring those lines between what we expect our professionals to do, you need to be addressing that through some sort of college or professional association, not doing it through some kind of legislation. I expect that clarity in there. If you are going to be messing around with people's personal information, particularly personal health information, you'd better be pretty clear about exactly what the parameters are. This bill has failed to accomplish that to the degree that I expected it to to address this particular problem.

I can give some inkling to the previous speaker of what kind of information they'll be looking for because some of it was the information they were trying to get under the Health Information Act. They wanted to know the location of the individual, their current home address, their social insurance number, their health care card, their appearance, obviously their contact information, location information, but also a lot of details about the medical condition that the person was in, which I feel is inappropriate. If you're trying to chase down a bad guy for some reason, you know, you may well be able to present an argument to me about why you need their location information, but their medical information, I would argue, should not be part of that.

10:20

You know, it's so frustrating to me that this government, with all of the resources that it has, having been in power for as long as it's been, having control over everything it's got control over, still manages to give us half-assed bills. Sorry. I'm not supposed to use language like that, and I apologize for that.

It's not well done. It's disappointing, but you know what? It's also a cost factor. When you don't give clarity in legislation, you wind up with a big old mess, and big old messes cost money. It costs money for somebody to clean it up, or it costs money for someone to fix it. That's what bugs me. We have this government that proclaims that it's, you know, fiscally responsible, yet every time I look up, we've got another piece of legislation in front of us that either cannot explain how it is spending taxpayers' money, cannot explain what benefit it is expecting to get from foregone revenue, or just creates a big old mess that costs money for taxpayers to clean up. That's why I get annoyed with you. You should be able to do better with the resources that you've got.

Thanks.

The Acting Speaker: Any other members wish to speak?

Does the Member for Strathcona wish to close?

Mr. Quest: I'd just ask to call the question, Mr. Speaker.

[Motion carried; Bill 46 read a third time]

The Acting Speaker: The hon. Deputy Government House Leader.

Mr. Renner: Thank you, Mr. Speaker. Having completed the business for this evening, I move that the House do now stand adjourned until 1:30 tomorrow afternoon.

[Motion carried; the Assembly adjourned at 10:22 p.m. to Wednesday at 1:30 p.m.]

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