



Province of Alberta

The 30th Legislature
Second Session

Alberta Hansard

Monday evening, December 7, 2020

Day 77

The Honourable Nathan M. Cooper, Speaker

Legislative Assembly of Alberta The 30th Legislature

Second Session

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Milliken, Nicholas, Calgary-Currie (UCP), Deputy Chair of Committees

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Legislative Assembly of Alberta

7:30 p.m.

Monday, December 7, 2020

[Mr. Milliken in the chair]

The Acting Speaker: Thank you, hon. members. Please be seated.

Government Bills and Orders Committee of the Whole

[Mr. Milliken in the chair]

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

Bill 46 Health Statutes Amendment Act, 2020 (No. 2)

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

Mr. Shepherd: Thank you, Mr. Chair. I appreciate the opportunity to rise and speak to Bill 46. Now, we've had some wide-ranging discussion, and I think we're probably going to have much more on this particular bill and the very serious concerns that have been brought forward regarding its amendments to the Health Information Act. Indeed, just this past Friday we at the Standing Committee on Legislative Offices had the opportunity to sit down with the Information and Privacy Commissioner, Commissioner Jill Clayton, and speak with her about her budget and business plan and indeed have some discussion with her about her concerns with Bill 46 and in particular, again, those changes to the Health Information Act.

She was very clear, Mr. Chair, as she made clear when this act was first released, that she was not consulted on this legislation. The expert on privacy and the use of people's personal information in the province of Alberta was not engaged by the Minister of Health in putting forward significant changes to legislation which has a sweeping impact on every Albertan's right to privacy in their health care information. It puts sweeping new power in the hands of the Minister of Health to determine who gets to access that information. It opens the borders of Alberta for people's health information to be used and accessed by entities outside the province of Alberta with no recourse – no recourse – if that information is breached or abused, taking away part of the protections that are there for Albertans who decide that they do not want their information shared ever, period.

This is a significant undermining of protections that are in place for the people of Alberta, a massive increase in the scope of the use of that information, all pushed forward and rushed into this Legislature by this minister with no consultation with the Information and Privacy Commissioner, no consultation with the thousands of health care providers and people that work within this system, whose work is impacted by the changes, no consultation with the Albertans who are affected, whose own health information is put at risk, taking away the requirement for the minister, for Alberta Health, for Alberta Health Services, and for the Health Quality Council of Alberta to take the most minimal step of being required to do a privacy impact assessment to determine if there are risks to people's personal health information when new steps are taken, when new opportunities are opened, and when new things are done with people's personal health information. Mr. Chair, less accountability, less transparency: an incredibly bad habit of this minister as we saw with Bill 10, as we see with many bills to just

award himself sweeping power without oversight. This is deeply concerning. Deeply concerning.

Indeed, Ms Clayton was incredibly clear in her discussions with us at the committee, she was incredibly clear in the letter that she wrote to the minister, in every statement that she has made that this bill should not be proceeding through this House, that there is significant consultation that should be done before these measures move forward. She has been clear that there are some elements of this bill that are good things, Mr. Chair, that she indeed supports, but the things that she is concerned about are concerning enough that she believes this bill should not move forward.

That being the case, I have an amendment I would like to introduce. I'll wait for that to reach you, Mr. Chair.

The Deputy Chair: Hon. member, if you could please read it into the record for the benefit of all those here.

This will be referred to as amendment A1. As I think all members here know, copies will be at both tables at the entrances. However, if you'd like a copy, please feel free to put up your hand and one will be delivered.

If the hon. member could please continue on A1.

Mr. Shepherd: Thank you, Mr. Chair. With this notice of amendment I move that Bill 46, the Health Statutes Amendment Act, 2020 (No. 2), be amended by striking out sections 51 to 62 and section 124(b). As I've been clear, we have heard loud and clear from the Information and Privacy Commissioner, an independent officer of this Legislature, one of the key protections that this minister cannot undermine, thankfully for Albertans, as he has the Health Quality Council of Alberta, as he has so many other things that are there to protect the best interests of Albertans – she has been very clear that this legislation needs work. This government did not consult despite its protestations otherwise. We have seen this Minister of Health spin and spin and spin and refuse to be straightforward, to give the truth to Albertans, and indeed, by doing so, putting the privacy of Albertans at risk.

The commissioner has been clear. This legislation significantly broadens access to the electronic health records of Albertans. She has stated that jurisdictions around the world are strengthening their legislation, that they are providing better protection for their residents, and that major sections of this bill – the commissioner clearly stated, Mr. Chair – go in exactly the opposite direction. This legislation has gone so far as to allow out-of-province, as I said, or even out-of-country service providers to access Albertans' health records, where we have no protection, no jurisdictional oversight. As the commissioner herself has noted, she as the protector of Albertans' information, as the enforcer of our privacy legislation will have no power to investigate breaches outside of Alberta's borders or to hold anyone who misuses Albertans' personal health information to account. That is an incredible risk that this minister is taking. That's utterly unacceptable.

The legislation is also removing some key definitions. It removes the definition of an authorized custodian of Albertans' prescribed health information. In simple terms this government is removing from the legislation any definition of who has the right to access Albertans' private health information and putting that at the discretion of one man, the Minister of Health, I dare say someone who many, many – I'd say a vast majority – Albertans do not trust. Certainly, the health professionals that I've spoken with have made that very clear. They had a very clear vote to that effect, the Alberta doctors in the Alberta Medical Association. Again, Mr. Chair, that is unacceptable, and I do not understand how members of this government, the backbench MLAs, can sit here and allow this to go forward, to be done to their constituents so blithely.

7:40

We're bringing forward a very simple amendment. It strikes out sections 51 through 62. Simply put, it removes from this omnibus health legislation the sections that the Information and Privacy Commissioner has flagged as deeply problematic, which she has said should not move forward, and it allows this government to do what they should have done in the first place, to do their homework, Mr. Chair, to actually represent Albertans, to actually do the due diligence, which is the least that they should do when they are embarking on such a significant shift.

It gives the government time to actually sit down and actually consult with the commissioner. It gives them time to sit down and talk with the thousands of health care providers. It gives them time to listen to Albertans themselves because it is their health information, Mr. Chair. It is not this government's resource to pillage, to decide what it's going to do. It belongs to Albertans, and they deserve to have it protected, and they deserve to have their say. They deserve far better than just having this legislation jammed through the Legislature in the midst of a global pandemic.

I encourage this government to have a little humility, to recognize that they have gone too far too quickly. We saw what happened with Bill 10, when this government barrelled forward with arrogance and entitlement, and all the work they had to do to backtrack. Here's an opportunity to avoid having to do that again, so I encourage this government to take the time to consult on an incredibly complex issue.

Mr. Chair, this government is not short on issues that are angering Albertans right now. They have never been at a lower ebb in terms of their popularity, and I know these members are hearing from their constituents because I see those e-mails, too. I encourage them not to add yet one more reason for Albertans not to trust them, to be looking forward to 2023 and the opportunity to remove a government that has no respect for Albertans' rights to protect the privacy of their information.

The Deputy Chair: Are there any other members looking to join debate on amendment A1? I see the hon. Member for Edmonton-South has risen.

Mr. Dang: Thank you, Mr. Chair. It's a pleasure today to rise and speak to amendment A1 on the Health Statutes Amendment Act, 2020 (No. 2). I'd like to thank my colleague from Edmonton-City Centre for moving this amendment. I think it's a very reasonable amendment, and I think it's something that we've heard from the experts over and over and over again.

Mr. Chair, when an independent officer of this Legislature, the Information and Privacy Commissioner, Commissioner Clayton, says that this legislation isn't ready to move forward, that actually this legislation did not consult her office at all, and indeed that this legislation simply worsens privacy protections for Albertans, we need to take a look at what's going on. We need to stop, we need to review, and we need to understand that this is the wrong path for Albertans, this is the wrong direction for our government, this is the wrong direction for our province.

This government did not consult. This government did not talk to anybody, and instead what we saw was this minister spin away the truth. This minister continued to talk about how consultation was done, how this legislation is thorough, and that simply was untrue, Mr. Chair. It simply was untrue because this government did not bother to do the work, did not bother to ensure that the privacy of Albertans would be protected, that the electronic health records of Albertans would be protected, that some of the most confidential and private information that will ever be generated on an individual in this province would be protected. It's shocking that these sections

that are identified in the amendment here will allow the government to disclose that information to out-of-province, even out-of-country providers, where we have no jurisdictional oversight, where we have no ability to oversee the usage of Albertans' health records. As the commissioner noted, there is no ability to investigate breaches outside of Alberta's jurisdiction. There is no ability to hold organizations or individuals to account.

It doesn't matter who gets access to Albertans' health records outside of the province. It doesn't matter if it's misappropriated by an organization. It doesn't matter if it's misused by an individual within an organization because, Mr. Chair, there will be no tools; there will be no mechanisms for our government, for Albertans. There will be no recourse when the personal health records on individuals are compromised. It's absolutely unacceptable. It's absolutely unacceptable that Albertans do not have a say in how their health records are being used and how their personal and confidential information is being used. It's absolutely unacceptable that the Information and Privacy Commissioner was not consulted on these clauses.

It's absolutely unacceptable that when every other jurisdiction in the world is moving towards improving privacy protections, improving individual privacy rights, improving data security, improving data information protection, Alberta is taking steps backwards. Alberta is actually saying to Albertans, this UCP government, this UCP Health minister is actually saying to Albertans that we should trust them and that they will have good faith in who they will give personal, private medical records to. That's absolutely ludicrous to suggest, Mr. Chair. It's absolutely ludicrous to put in this omnibus piece of legislation a section that is so deeply problematic, that so deeply affects every single Albertan.

It is unacceptable that the judgment of the Health minister, the Health minister who stood in the driveway of a medical professional, of a doctor, and berated that doctor in front of his family, a medical professional who only criticized the minister on social media, that this Health minister, someone who used and misappropriated Alberta Health Services information to call physicians on their personal cellphones, using Alberta Health Services Information – and now that minister is asking Albertans to trust him, to trust this government with their health records, to disclose their health records to organizations in jurisdictions that we will have no oversight on, to outside jurisdictions that Alberta law will have no effect on, that we will have no enforcement mechanisms, no means of recourse for if Albertans' personal medical information is misused by an outside party.

It's bad enough, Mr. Chair, that this Health minister misused that information to berate doctors in Alberta. But it's even more shocking that that Health minister now wants to make it possible for people in other countries to misuse that information. This amendment would close that loophole. This amendment would ensure that we have proper privacy protections because it's their health information. It's Albertans' health information. It's not the minister's health information. It's not this government's health information. It's not their health records. It's Albertans'. Albertans have a right to protect their data. Albertans have a right to trust that their data will not be misused. Albertans have a right to ensure that they are consulted before their information is used. It's the very basis of information and data protection.

When we talk about information and data protection, we talk about privacy rights, we talk about jurisdictional issues around these things, Mr. Chair, this is a conversation that's been happening for the last few years around the world, including here in Canada, including at the federal level. We have seen time and time again that instead of expanding the ability for outside organizations, for private corporations, for other governments, for individual entities

to access additional private data – that has become the standard, to reduce that information, to bring informed consent into the conversation, to ensure that people know what their data rights are and where their data exists and how it is managed, to ensure that for every single individual, when information is generated on them, that information is protected. That information must be protected. That information must be safeguarded. It must be compiled in a responsible manner.

7:50

We have no guarantees that will be the case. If this legislation is passed without the amendment, if this legislation is passed as is, we have no guarantees that an outside organization will not misuse the information. We have no guarantees that if an individual, a malicious individual, misuses the information from an outside organization, there will be any legal means of recourse.

It simply does not make sense. It simply does not make sense to ram this legislation through in the middle of a pandemic. It simply does not make sense to ram this legislation through without any consultation with the Information and Privacy Commissioner, without any consultation with Albertans, without properly informing Albertans of the risks and dangers of having their health information disclosed in this way, without properly informing the public of why this can lead to information and data privacy rights issues, of not properly informing the public of the serious long-term harms this may have.

Mr. Chair, information and data is stored in a way right now in the modern day and age so that even if we were to say that we retracted the right for an outside organization, we no longer wanted to hypothetically give this foreign organization our health records anymore, well, the data will have already been transferred there. They will already have copies of the data. We will have no recourse in terms of withdrawing our consent for that. We will have no recourse for ensuring the data is properly deleted. We will have no recourse to ensure that Albertans' personal medical health records are safeguarded, and that is extraordinarily concerning. That is extraordinarily dangerous.

It's extraordinarily dangerous that this government would not even stop to consider the ramifications, would not even stop to consider how significant this would be in terms of privacy rights, would not even stop to consult the Information and Privacy Commissioner, would not even stop to consult with Albertans, would not even stop to even ask Albertans if they wanted their health records shared out of province, if they wanted their health records shared out of country.

Mr. Chair, the health record is possibly the most private piece of information that will ever be generated on an Albertan by this government. It's possibly the most confidential piece of information that will ever be generated by an individual by this government. It will include diagnoses. It will include treatments. It will include drug regimes. It will include schedules of drugs. That data, if misused, could have catastrophic effects for Albertans. That data, if misused, would be extraordinarily damaging for Albertans.

We must stop this. We must have a little bit of humility, and we must look at where we have gone too far, look at where consultation has not been adequate, look at where the Information and Privacy Commissioner has said we must stop, that this legislation should not proceed.

Mr. Chair, it's not just the opposition calling for this legislation to stop. Jill Clayton, the Information and Privacy Commissioner here in Alberta, an independent officer of this Legislature, has repeatedly called, in a very unusual letter to this government, to say that these clauses, this bill was insufficient, that this bill was inadequate, that this bill should be stopped, that this bill takes

Albertans' privacy rights back. Those are very unusual words for an independent officer of the Legislature to make here. It is extraordinary that it would even have to be said.

Mr. Chair, when we look at this legislation, when we look at the comments made by the experts across the world, the experts here in Alberta, and the people sitting in this place, the opposition in this place, we know that it simply cannot move forward, that it simply does not make sense to move forward with these grounds because, again, when we look at these clauses, when we look at the significant changes it makes, the substantive changes it makes, when we look at how these policies will be implemented and the rights it gives up, we need to stop and think.

This isn't a partisan issue. It's not an issue where there is a divide. Every single member of this Assembly believes in individuals' rights, that Albertans have privacy rights, that Albertans have freedoms to choose these things. Mr. Chair, what is happening here is that this government is taking that away. This government is reducing those rights for Albertans. It's reducing the safeguards for Albertans. It's reducing the protections for Albertans. It's actually giving up their personal health information, it's actually giving up their diagnoses, and it's actually giving up their health records to foreign corporations, foreign entities, organizations that this government will have no oversight over. The individuals who have lost control of their health records will no longer be able to withdraw their consent, will no longer be able to request that their data be deleted.

It is simply one of the most shocking and regressive changes to information privacy that is being introduced anywhere in the world right now. When we look at other jurisdictions, when we look at jurisdictions like the European Union, who have introduced GDPR, the gold standard for data protection, the gold standard for information privacy protections, these changes that are in this bill go against almost every single clause, almost every single principle of GDPR. It does not provide informed consent, it does not provide safeguards, and it does not provide assurances that Albertans can withdraw their consent. All of these issues must be corrected before we move forward. All of these issues must ensure that Albertans' rights are preserved, that Albertans' data is preserved.

Again, Mr. Chair, it is simply wrong headed. It simply does not make any sense that when nearly every country in the world right now is trying to improve protection, when every western democracy is having hearings to improve data and privacy protections, when just our neighbours to the south, the United States, have called CEOs of major companies before both Houses to have hearings around, "How can we improve data protection?" and here in Canada both the Senate and the House of Commons have had hearings with major companies to see how we can improve data protection, then here in Alberta we would have this regressive piece of legislation that removes protections, that reduces the rights of Albertans, that does not provide informed consent, that does not provide the ability to withdraw consent, that does not provide oversight, that does not provide protection, that does not safeguard against the misuse of information. It simply does not make any sense.

It simply is unreasonable that it was not even considered, that the government did not even consult the Information and Privacy Commissioner on these substantive changes. The government did not even consult the Information and Privacy Commissioner on these changes that would give up Albertans' rights to privacy, that would give up Albertans' rights to their own personal information, their medical diagnoses, their medical information. That is something that is inexcusable.

This must be rectified. We must accept this amendment. We must look at the issues. We must realize that this is not a partisan issue.

This is an actual data rights issue. This is an Albertan individual's rights issue. This is something that we must acknowledge is around the freedoms of Albertans and how they know their data is being managed, how they know their information is being managed. Mr. Chair, when we look again at health records, when we look again at this information, it will be and it is likely the most confidential, the most private information that this government will ever generate on an individual, that we will ever have on individuals in this province, that we will ever know about individuals in this province.

The consequences of that data being used by a malicious actor, whether that malicious actor is within an organization outside of this jurisdiction or is an organization outside of this jurisdiction, would be catastrophic. The effects it would have on individual lives would be catastrophic. The ability for foreign entities to use that information would be catastrophic.

8:00

We need to pump the brakes. We need to stop. We need to slow down. We need to talk to the Information and Privacy Commissioner. We need to talk to the experts. We need to talk to people from other jurisdictions who had similar issues. We need to understand the ramifications of releasing data. We need to understand the ramifications of Albertans' medical data being released without their consent. We need to understand the ramifications of what it means that you can't withdraw your consent for a foreign entity to control your medical data.

All of these are real issues; they're not hypothetical. These are the actual consequences of this bill. They will come into effect if this bill is passed. This bill will allow foreign entities to control your data if this bill is passed, and Albertans have a right to protect their data. Albertans have a right to ensure their data is not misused, have a right to ensure that their data is safeguarded. They have a right to ensure that their data is protected, and, Mr. Chair, this government is taking that away. This government is taking it away from Albertans.

It's reducing individual freedoms, it's reducing individual rights, and it's something that I honestly did not believe would ever come before this place, particularly from a Conservative government, that a government would try to take freedoms away from its own people, would try to take the rights for their own information away from its own people, from its own citizens, that this government, this UCP government and this Premier would actually tell Albertans that their information rights were not important, that their information rights should be used by foreign entities, should be disclosed to foreign entities, that this government would have no recourse over, that individuals in this province would have no recourse over if it was misused. That they would give up this information willingly, without the consent of Albertans, without the consultation of Albertans, without the consultation of the Information and Privacy Commissioner, that they would give up this information, this personal data of its own citizens is something that I honestly never believed could come to this place.

Mr. Chair, this government is in denial if they don't understand the issues here. They are in denial if they don't understand the ramifications of this. This government needs to slow down. They need to have some humility. They need to listen to the concerns of the independent officer of this Legislature. They need to listen to the concerns and understand how information and data protection works. They need to understand that Albertans' personal health records are important. They need to understand that data protection is important, that the ramifications that we have when we transfer that information out of jurisdiction are not something that can be corrected.

This happens, and it happens forever. When you send data out of province, when you send personal health records out of jurisdiction, you cannot withdraw that information. There is no way, legislatively or otherwise, to retract that data. There is no way that Albertans will be able to ask for their data back, to ask for their data to be deleted. There is no way that Albertans will ever be able to reclaim those rights.

The Deputy Chair: Thank you, hon. member.

Are there any members looking to join debate on amendment A1? I see the hon. Member for Calgary-Mountain View has risen.

Ms Ganley: Thank you very much, Mr. Chair. I stand in support of this amendment. I think the changes it makes are incredibly important, so I think it's worth noting initially what those changes are. This bill does a lot of things, so I think it's worth sort of going over this section. Basically, we are suggesting that the government amend this bill by striking out sections 51 through 62, and these are sections which have been identified as problematic by the Information and Privacy Commissioner.

I think that probably the first thing worth noting on this is that the minister had indicated that he had consulted with the Information and Privacy Commissioner, and the Information and Privacy Commissioner begged to differ on that particular point. I think that that is incredibly troubling, because these are complicated provisions that have a deep and fundamental impact on the rights of Albertans, the right to their private medical information, which most people consider a fairly significant thing. So to have the minister suggest that he had consulted with the Information and Privacy Commissioner, the watchdog on this sort of matter, suggests that these things have been approved, that the person who is responsible to the public for safeguarding the rights of Albertans in this area had been consulted when, in fact, she hadn't. That's extremely problematic and extremely troubling. It's just not the sort of mistake that you make as a minister, not if you take yourself and the responsibilities that the people of this province have vested in you seriously. To suggest that the person who acts on behalf of Albertans in this matter, to safeguard their rights, is okay with this when, in fact, she hasn't seen it is incredibly troubling. Now, I certainly believe that there can be different perspectives on these sorts of things, but this is not a difference of perspective. You did or you didn't. I think that's the first thing to note about this.

I also think that it's worth noting that – I mean, this is in a very large bill that acts on a number of sections and changes a number of things. This is, in my view, probably one of the most problematic of those things. The reason we stand here and we say that these things need to be debated – the government loves to stand up and talk about how many hours of debate we've had on certain bills, but I would argue that the hours of debate are not the relevant measure. The reason that I don't think that they're the relevant measure is because, sure, it's about us. We are the ones who have voice in this place, who have the ability to stand up and speak and put things on the record, but it's not really about us because we live in a representative democracy. What it is actually about is our constituents. What it is actually about is their ability to understand and to be engaged in the material and how they feel about that. The relevant measure isn't the number of hours of debate because us talking endlessly in this place is not what has the impact in terms of the public having the time and the bandwidth to absorb the information.

There is so much information coming at the public constantly these days and not just in terms of legislation. We stand in the midst of a global health pandemic that results in ever-changing rules that govern our behaviour. Currently those ever-changing rules are very

deeply confusing. The number of people who have called in to my office frustrated and confused, who don't understand what's going on, what it is that they're required to do – they want to comply, but they don't understand how to, or they feel that the rules are somehow arbitrary or unclear in their application, which in many cases they are. The rules were also published late, almost 24 hours after people were expected to comply with them, which in terms of laws is a serious oversight. All of this is to say that presently the public's amount of attention that they have while they are under significant stress, while many people are attempting to work while home-schooling multiple children simultaneously, many of whom are facing the most stressful moments of their life, what little attention they have to devote to the laws of this province is devoted to trying to understand this government's complicated and peculiar rules. So legislation like this can essentially be slid through the House by this government, and that is, in my view, exactly what they are doing.

They are attempting to make these changes when people do not have the bandwidth to stand up and object, when there are so many other ways in which this government is negatively impacting their lives that they just can't pay attention to any more bad news coming out of this provincial government. I think that that is really, really problematic because the issue here isn't whether I've had time to read the legislation or talk about the legislation or understand the legislation. The issue is whether my constituents, whether Albertans in this province have had time to understand this legislation. I don't think that they have, because I think that if they had done, they would be a lot more concerned. What this legislation is doing and what we were attempting to change with this amendment is fundamentally affecting how information about each one of us, information about our health, about potentially the most personal details of our lives moves between different actors in the system.

8:10

When we're talking about something like information and privacy, it's worth noting that we are focused on a system of how information moves because, yes, it's absolutely possible for a bad actor to commit a breach, but it is also possible for breaches to occur accidentally. In fact, we have seen several examples of this in the past in this province. That's why rules around these sorts of things are so important, because it's not necessarily about the individual people; it's potentially about whether the system is built with the appropriate checks and balances and the appropriate safeguards in place to safeguard the information of Albertans.

This information has value. I mean, you can argue over whether it's a philosophical value, but in some ways it is clearly a monetary value because corporations the world over are engaged in an enormous amount of data mining. Facebook, Google, you name it: your devices are constantly collecting information about you. And they don't do this – programmers don't take the time to write this code and to take this information and to gather it together and to collate it just because they're interested in, you know, the universe. They do it because it has value, because it's worth something, which means that potentially it's worth something to each individual to keep their information to themselves.

I think that if people really understood what was in this, there would be significantly further debate on this. Another reason that I don't think the number of hours that we speak about a bill is necessarily relevant is that, again, some of these bills are incredibly long. You know, this bill is a very long one. Another bill before this House, Bill 47, is also an incredibly long one, one which I object to fundamentally and with the very core of my being and on so many different fronts. I've had one opportunity to speak to that bill so far.

I spoke for 14 minutes, and I covered two sections in detail because in order to understand what is problematic about the legislation that this government is advancing, it cannot be separated from the context.

Turning to this particular amendment, one of the things that the government legislation, so without the amendment – one of the things we are trying to fix that this legislation does is that it removes the definition of prescribed health information. I will read it because I think it's important.

“Prescribed health information” means health information about an individual that is of a class or type prescribed by the regulations that a regulated health professional or an authorized custodian may or must make accessible to authorized custodians via the Alberta EHR.

Maybe I shouldn't have read that. That's a pretty long and complicated definition. But, essentially, what we see as problematic about this is that, you know, knowing what is prescribed health information – and, again, it's prescribed in regulation – and knowing who authorized custodians are is important. In simple terms, the government is removing from the legislation information about who has the right to access Albertans' private health information. I think that's problematic, again, not just from the possibility of a bad actor sort of a standpoint but also from the possibility of an accidental or systemic breach.

I mean, to me, this information about a person is probably more valuable to them even than the information that is being collected about them constantly through their cellphones and through their social media and through various other platforms. I think, you know, that your health information is pretty central to who you are, and whether or not you disclose that information, I mean, really ought to be your choice.

And there are any number of things that we could talk about that could sort of fall under this area, but people today still are concerned about admitting that they have mental health challenges. It's hard enough to admit that to your doctor. Imagine if admitting that to your doctor meant you were admitting it to the whole world. How many people would choose not to seek treatment? Health information could consist of treatment after the fact on a sexual assault victim who may not want people to know that about them. Health information could include information about gender transition, and maybe people don't want that to be the first thing new people they meet know about them because it's their private health information and because it isn't really any of anyone else's business unless they choose to share that information.

You know, we talk a lot in this place – or we have on number of bills – about the idea of consent, and that can stretch to a lot of different areas, but I certainly think that when we're potentially talking about where information that private about an individual is going, they want to know that it's protected, and they want to know that if it's being shared, it's with their consent or for some sort of valid purpose.

I think these sections are extremely problematic because, I mean, this government didn't just fail to consult with the Information and Privacy Commissioner; it failed to consult with Albertans. I think that is pretty problematic. They love to get up in this place and talk about their mandate and how that gives them the ability to do any of this. I mean, it's a pretty long platform, but I certainly don't remember in their platform that they came forward and said: we're going to take away your right to privacy over your health information. I don't think that is part of this mandate, so I think that they do owe a duty to Albertans to give them time to process that information.

That's exactly what this amendment would do. It would strike out the problematic sections. It would give the government time. And

this isn't to say that they could never bring forward legislation like this again, but it would give them time. It would give them time to talk to the Information and Privacy Commissioner. It would give them time to talk to Albertans, to talk to people who are interested in and care about this area of law. I have to say that given some of the ways that this government talks about government, I'm a little concerned that by circumventing the safeguards on Albertans' individual privacies, they're hoping to, you know, sell some section of the system off to the highest bidder or to save some \$2 here to spend \$400 the next year in terms of litigation that they're now dealing with. I'm concerned. I'm concerned about these sections. I don't think that they're headed in the right direction, and I think that all members in this place should consider supporting this amendment.

The Deputy Chair: Thank you.

Are there any other members looking to join debate on A1?

[Motion on amendment A1 lost]

The Deputy Chair: I see the hon. Member for Edmonton-City Centre has risen.

Mr. Shepherd: Thank you, Mr. Chair. Well, it's unfortunate. This government or members or, at least, government members in the Chamber tonight have decided that they want to barrel ahead with a series of very ill-conceived, unconsulted, and downright dangerous amendments to the Health Information Act. It's deeply concerning, as my colleagues have ably joined me in noting, the risk at which these changes will put Albertans' private health information, indeed the potential breaches that this could inspire, the damage this could do for a purpose that this government has yet to articulate.

8:20

Beyond very vague and high-level platitudes from the Minister of Health he has offered no justification for the changes he is bringing forward. Indeed, we know that he is not doing this – at least, if anyone has asked for these changes, he's not telling us who it was because to date he has not been able to actually tell us any actual consultations he had. He has not provided any report. He has not provided any transparency about how these changes were developed, why they were developed, and what it is that he actually intends to do with this sweeping power he has awarded himself.

That being the case, Mr. Chair, I would like to move another amendment.

The Deputy Chair: As with the previous amendment, of course, copies will be available at the tables.

This one being a little longer than the last, perhaps if the hon. member, when I recognize him again, just gives us the Coles Notes version as to the intent of this. Just to confirm, do you have the original up there? Oh. We've got the original right here.

This will be referred to as amendment A2. Of course, if you would like a copy delivered, you can put your hands up.

The hon. Member for Edmonton-City Centre has the call.

Mr. Shepherd: Thank you, Mr. Chair. If government members are astounded by the length of this amendment, they should look at the size of their bill because, frankly, what we have here is another omnibus piece of legislation in which this government is making sweeping changes to multiple pieces of legislation, and I'm sure these government members have not actually sat down and read the contents of this bill. They do not understand what they are voting for, which is why we are happy to take this time to try to help them

understand what it is that they are potentially looking at voting in favour of doing to Albertans.

This particular amendment, Mr. Chair, is focused on the fact that this bill removes any actual definition of what is an authorized user of Albertans' health care information. Indeed, the only definition that exists here essentially is: whoever the minister says it is. I don't think that if a single one of the members in this House sat down with their constituents and explained, "I want to vote in favour of a bill that says that the definition of who can access your health care information is whoever the Minister of Health says can access it," then that constituent would say: "Ah, sounds good. Absolutely."

This amendment looks to provide some actual definition, some actual context, some actual clarity for Albertans, some fences, as it were, Mr. Chair, around the minister's ability, that he is giving to himself, because, frankly, the government members rejected our first attempt to amend this bill tonight by just simply removing the sections of this omnibus bill that are gutting the privacy rights of Albertans, that have been flagged as deeply concerning by the Information and Privacy Commissioner. They seem determined to press ahead with flawed legislation. At minimum we need to fix some of the more obvious problems like this lack of definition of an authorized person.

What they are doing is that they're creating something called an authorized user. They're creating that term within the act, but they are leaving that term without definition. The problem, of course, is that the commissioner has pointed out that very fact, and to make it worse, there is no indication in this legislation of who actually gets to provide the authorization to access these private records. There's that confusion. We know that the minister is awarding himself some sweeping power, but there is vagueness of all things here, Mr. Chair – vagueness, a lack of actual clarity about who gets to do this within the act, Albertans' private health information – and this government leaves the bill half written. This amendment is intended to fix that error, and I certainly hope that it's an error because if that's the standard of care that this government is taking when it comes to drafting legislation about personal privacy rights, then we've got even bigger problems here.

This amendment creates a class of authorized users that can be brought into the regulatory framework. It creates a definition of another authorized user. I think that's pretty common sense, that if you're going to throw a term out, if you're going to enshrine that term in law, you define what that term actually means. This follows on the clear recommendations and feedback of the Information and Privacy Commissioner. Imagine that, Mr. Chair. Put another way, to not accept this amendment is to actively choose to put Albertans' private health information at risk. I really want to believe that's not the intent of this government, and I really want to believe that is not the intent of the members here in the Chamber tonight.

But if it is, well, then I guess members can choose to vote it down, and they will demonstrate to Albertans what their true colours are. But if this government genuinely does care about personal privacy and if they are truly conservatives, as they style themselves to be, they should deeply care about people's privacy rights. That should be core to their fundamental philosophy.

If they truly care about that and how this legislation works with the benefit of scrutiny, then I encourage them to vote in favour of this amendment because, as I've said here earlier, we have been here before, just this year, on health legislation with Bill 10, where we brought in real and substantive amendments based on consultation with experts, which the government chose to ignore, which then led to a concerted e-mail campaign and enough pressure on government members that the Premier backtracked, at first said that he would bring in amendments to the legislation, backtracked on that, struck a committee on which we spent several months

reviewing the bill and hearing from the same experts and essentially landed on making the very changes that we introduced as amendments back in the spring.

So I would encourage members to look carefully at this amendment now, this amendment which addresses a real and glaring problem in this act. Let's fix this now so that we don't have to come back next session and do this all again just because the government wouldn't listen.

Thank you, Mr. Chair.

The Deputy Chair: Thank you, hon. member.

Are there any members looking to join debate on A2? I see the hon. Member for Edmonton-Whitemud has risen.

Ms Pancholi: Thank you, Mr. Chair. It's a pleasure to rise in Committee of the Whole on Bill 46, the Health Statutes Amendment Act, 2020 (No. 2). I'd like to first of all thank my colleague the Member for Edmonton-City Centre for bringing forward this amendment today following the defeat of the previous amendment. While we believe that the previous amendment would have addressed some of the significant shortcomings in this bill, this is yet another attempt because, of course, we anticipated the likely outcome of the previous amendment. We're bringing forward this amendment as an attempt to correct what we think is truly an oversight in this legislation, to try to minimize the detrimental impact of this bill and its proposed changes on the privacy of the health information of Albertans.

8:30

Now, Mr. Chair, I want to go over a little bit about what this amendment is intended to do because this is genuinely a thoughtful amendment intended to improve this bill. It is intended – and it is long. It is long because it is thoughtful. Our caucus carefully looked at the provisions of the bill and said: how can we perhaps make this bill a little bit better to protect the health information of Albertans? What it does, as my colleague from Edmonton-City Centre outlined, is it addresses what is a glaring oversight in this bill, which is that it does not define who an authorized user or an other authorized user might be.

Just for context, to remind Albertans, because I realize Albertans are probably incredibly preoccupied right now with maintaining their health and safety, keeping their businesses alive, making sure their kids are safe, and making sure the health care workers in their lives, whether they be family or friends, are safe and cared for – they're worried about how to go about their day-to-day life right now, so I'm sure that they're not paying a lot of attention to what's going right now with Bill 46.

To be clear, Mr. Chair, I think that's precisely the point. I think that's precisely the point of almost all the legislation that we have been dealing with in this Assembly to date. It's been to bombard Albertans and the Assembly with a series of pieces of legislation that are completely unrelated to what's most pressing to Albertans' lives right now, which is their health and safety and their businesses and their economy and their children and their families. That's why we're here debating this, and it's still our job to make the best efforts we can to offer those alternative solutions to this government to improve the legislation, which will likely – I do not want to presuppose the outcome or the determination of this House, but if it is likely to pass, it is our job as the opposition to try to improve this legislation as best possible and to see that this is not a partisan issue.

This is a way to actually make this legislation better. I echo the comments from my colleague from Edmonton-City Centre that we are still at a loss as to what the intent behind this is, why the Minister

of Health and this government would want to bring this forward to significantly impact the privacy of Albertans and their health information, and why they would want to proceed in this way, whether it was accidental or whether it was intent, but we will do our best to try to improve the situation for all Albertans. I think it actually will speak to a lot of those Albertans who perhaps the government members think of as their base or think are the people who might be most likely to support them politically. I think those people have a very deep interest in this as well. Every Albertan has an interest, but particularly those who are very, very cautious about how they share the most confidential private information, including health information. They would have a deep interest in making sure that there are clear parameters, restrictions, limitations on how that information can be shared.

Bill 46, Mr. Chair, makes Alberta Health and, in doing so, the Minister of Health the manager of Albertans' electronic health records as opposed to Alberta Health Services as it is right now. Now the Minister of Health and Alberta Health will have responsibility for the electronic health records of Albertans. What's important about what we are proposing today as an amendment is we have to start by looking at: what does Bill 46 do with respect to electronic health records? Specifically, what does it do around – who does it authorize to access electronic health records? If you go back to section 53 of the bill, which adds section 56.21(1) to the Health Information Act, in subsection (2) it describes the kinds of information or why it's important to know who an other authorized user is. This section of the bill allows for the Minister of Health and Alberta Health to determine who can have access to electronic health records, and it uses the term "other authorized users". It also says that the Minister of Health can "provide reports to authorized custodians and other authorized users related to their access to the Alberta" electronic health records.

This is the key issue here, Mr. Chair. This term, "other authorized users," is not defined in the bill. It is not defined in the act. This category of either individuals or organizations or corporations – we don't know because it's not defined – would have access. The Minister of Health can decide that they have access to electronic health records, and they can decide what records they keep. What we are proposing with this bill is to actually provide some parameters and definitions around who an other authorized user is. We do that by including in this amendment a definition of authorized user, which says it is "a class of user prescribed by regulation," and then in the regulation-making authority of the bill it sets out, of course, that the Lieutenant Governor in Council, or cabinet, may establish regulations that set out requirements to become an authorized user and custodian.

Really, it's not making the decision here in this bill, because we realize that that's got to be something that has to be decided by government. We think that it should have been decided already as part of this bill when this bill was being considered. Clearly, if there had been consultation done with the Information and Privacy Commissioner, that is something she would have flagged from the beginning. If you're going to be saying that the Minister of Health can share and provide access to electronic health records to other authorized users, you better be clear about who that is, but the government chose not to do that as part of the bill, so we are simply establishing, through this amendment, the ability for regulations to be created to set those parameters around who an authorized user is.

Again, we've raised a significant number of concerns about what that may mean if an authorized user is outside the jurisdiction of Alberta. What that means is that the Information and Privacy Commissioner no longer has the ability to hear concerns or complaints from individual Albertans about how their electronic

health records were used, how their private health information has been used, disclosed, would not be able to look into security breaches. This blends into other challenges with Bill 46 with respect to the fact that there's no longer a privacy impact assessment that's required. There are a number of interconnected challenges.

This amendment begins with the premise of: let's at least provide some clarity to Albertans and require that the minister turn his mind to, in a transparent way, who an other authorized user is. That is the purpose of laws, right? We need to have that transparency. There needs to be set out in regulations: who is qualified to be an other authorized user? This is critical for Albertans, who care deeply about the privacy and protection of their health information.

Whenever I've had the opportunity, Mr. Chair, to rise in this House and speak on Bill 46, I've come back to the essential point where we talk about health information. Whenever we talk about privacy to begin with, we talk about reaching that balance between: when do we have consent, when do we require that a person has to willingly consent to the disclosure of their personal information, and how do we seek to protect that privacy? We also recognize that there are reasons, very important reasons, why information can and should be disclosed without consent, but if you're going to create a legislative framework for that, you have to be clear about balancing those two things.

While we recognize and the legislative scheme around health information has long recognized that there are not going to be the same requirements around consent as is typically required around other personal information because we know that in order to access treatment and health care, that information must be shared – certainly, in the time of a pandemic we've seen the importance of having proper health records and proper health information and being able to ensure that those who are making decisions have access to appropriate health information to make decisions based on evidence. We've certainly seen those efforts made by our public health officers. I wish we had seen that same diligence and attention to gathering the appropriate evidence and making decisions based on evidence by this government, but I think that that ship has sailed, particularly with respect to the pandemic and particularly with respect to contact tracing. Certainly, we recognize the importance of having that appropriate health information be shared, especially in a public health crisis.

We recognize that there are limitations around consent with respect to health information, but then we certainly need to make sure that those privacy protections are even more vigilantly established and monitored and enforced because we know that there are limitations on an individual's ability to consent, and that is the balance that we've always sought in health information legislation, and that is the balance that this government is going in a different direction from, from almost every other jurisdiction who seeks to put in additional privacy measures, additional security measures when we're talking about information that cannot be consented before it's disclosed in all situations.

Once again our government seems to be going backwards and in a different direction from all other governments when it comes to protecting privacy, and I continue to say that we have not heard an explanation as to why. If there is a justifiable reason for it, I invite – well, we've invited the Minister of Health to speak to that matter; he has failed to do that. I invite government members to do that today.

8:40

We saw that the government has voted down a previous amendment without speaking to it. We are again providing a very clear – this is not a partisan issue; it's about simply saying that we should have some parameters. We should set out in regulation: what are the criteria? What are the circumstances in which somebody

may be described as an authorized user who can have access to Albertans' health information? That is not controversial. It should just simply be thoughtful legislative drafting. It should have been thoughtful legislation formation when this thought was gone into. What are our policy directions? What are the choices that we're making? Why are we making those choices? I think it would have been evident that it's necessary to do that, to describe who an authorized user is, yet the government didn't.

I'd like to hear if, for example, there are objections from the government members as to why they would not accept this amendment. I'd like to hear why in a thoughtful way. This is not partisan. It doesn't have to be talking points, just simply what the objection would be to including in legislation regulations and authorities around who an authorized user is. Now, I anticipate that there will be certain government members who might choose to rise now to speak because certainly I've noted that whenever I speak in this Assembly, certain members seem incited to respond. I look forward to a thoughtful response, Mr. Chair, from the government members about this amendment. Now, I know not every member of the government even looked at a copy of the amendment, didn't even take it, probably hasn't read it, so I'm hoping that somebody who has read it will take an opportunity to speak to why. Why would they – what are their concerns about including a regulatory scheme to define who is an authorized user?

I sincerely believe that that would be part of the thoughtful and robust debate that we would like to have in this Legislature around the formation of legislation because Albertans might be looking back on it one day to try to understand what happened. They're probably not paying attention to this, Mr. Chair. I appreciate that. They're probably not following along closely to what's happening to the Health Information Act and this bill and this debate. They've got bigger concerns right now, and I don't blame them. But my job in here is to try to develop the most fulsome and thoughtful legislation possible.

As an opposition we don't get a chance to make those decisions about what the legislation will say. But we can certainly propose – and we have tonight, and we will continue to do this – a number of thoughtful amendments to improve the legislation that this government has brought forward. I am hopeful that the government members will choose to respond in a similarly thoughtful way about why they would vote for or against this amendment. I hope we will have that discussion in this House, Mr. Chair. I certainly am an optimist, even after the time I've spent in this Assembly to date. I'm an optimist that we will have a thoughtful conversation.

Thank you, Mr. Chair.

The Deputy Chair: Thank you, hon. member.

Joining on A2, I believe I see . . .

Member Ceci: On 29(2)(a).

The Deputy Chair: There is no 29(2)(a) in Committee of the Whole. If you'd like to join debate on A2?

Member Ceci: Sorry. Amendment A2, sir.

The Deputy Chair: Then the hon. Member for Calgary-Buffalo has it.

Member Ceci: Thank you very much for the opportunity to speak briefly on A2 and to support my colleague from Edmonton-City Centre, who brought forward amendment A2 to look at this whole issue with regard to authorized users, and my colleague from Edmonton-Whitemud, who has argued in support of that.

I, too, will argue in support of the amendment brought forward. You know, I've taken the opportunity and I've read it several times over, the letter from the chief Information and Privacy Commissioner, Jill Clayton, who has written an eight-page letter and then an attachment. Members of government, if you have not read that letter, it is absolutely, in my view, damning with regard to this bill that's before us. As my colleague from Edmonton-City Centre has argued, we're just trying to assure that those who get information from the government of Alberta, notably Alberta Health, use that properly, it be understood who is accessing the information, and that they then keep the high level of privacy with regard to Albertans' health information or electronic health records and use it for purposes that are outlined.

I must say that if you read Commissioner Clayton's public letter, available so that all Albertans can read it, she is absolutely concerned with the expansion of users being able to access the electronic health records. She says that there are currently tens of thousands of users of that information, people who can use it who are part of doctors' offices, who are part of other, multitudinous numbers of access points to our health information records.

What this bill does is that it expands that. She's clearly outlined that and says, "I . . . cannot stress strongly enough how concerning it is." She goes on to explain the concerns she has, and she outlines ways to fix this bill that are in the attachment. There are 10 issues identified and 10 policy considerations she says will make this flawed bill better. Regrettably, members of the government backbench, the ministers on the other side are doing none of those. Nothing has come forward that would indicate that you have had a sober second look at this and looked at what your Minister of Health has brought forward and said, "I cannot support something that could wildly concern Albertans in terms of their private health information and be used in ways that are, frankly, beyond the control of the Privacy Commissioner here in this province," which is, frankly, stunning when you think about it.

I highlighted several parts of the letter. I won't read them all, but there are damning lines in here.

The proposed amendments increase privacy risks in two ways:

1. More health service providers will be given access to Netcare, including users potentially outside of the jurisdiction of HIA,

which is the health information agreement, and the oversight of my office.

2. There will be significantly broadened purposes for which Netcare information [can] be accessed and used.

It must be recognized that privacy risks are escalated by proposing to increase the number of users . . . significantly expanding the purposes for how health information available via Netcare may be accessed and used.

She goes on and on and on to say that this is not a bill that's well written. It needs to be changed so that we can assure Albertans in every instance that their information is protected.

Significantly expanding the permitted uses without also ensuring that the safeguards are in place is, frankly, perplexing and disappointing. I guess that perhaps one area where you think there is going to be some pullback by potential abuses is by the increase in the penalties with regard to the improper use of Albertans' health information, but frankly the horse is out of the barn at that point. People's information will have been accessed for purposes, potentially, that have nothing to do with improving the health of Albertans, and if you've put a penalty in place of \$100,000, I think, that's after the fact. What we want is to put good regulations up front, to put good policies up front, and the Information and Privacy Commissioner is suggesting what 10 policy fixes could be and

appended them to her letter. It's so disappointing to hear that none of those are coming forward by members of the government side.

Not one iota of worry seems to be expressed by members of the government with regard to the letter put forward by the Information and Privacy Commissioner. That independent officer works for Albertans to protect their information, and the amendment put forward by my colleague from Edmonton-City Centre is one step to try and put some common sense around the information that's in this bill that needs to be amended so that we understand what "other authorized users" are. As he said in his debate, it's a clear recommendation and feedback from the Information and Privacy Commissioner.

8:50

Put another way, to not accept this amendment – to not accept this amendment – will put the private health information of Albertans at risk. It's hard to believe that that's your intent, but that's the outcome of the decision you're willingly making by not supporting the amendment on the floor.

Mr. Chair, I'm frankly perplexed with the inability of the government members not to support the information coming forward by the Information and Privacy Commissioner. She repeatedly says:

I am also uncertain what consultation occurred with health service providers who signed individual agreements with Alberta Health.

She's wondering what consultation has taken place, I'm wondering what consultation has taken place, and with the putting in place of this bill, Albertans then will also in a transparent way be able to say: what consultations took place with regard to the Ministry of Health?

She – again, she being Commissioner Clayton – says:

I strongly encourage Alberta Health to engage in a detailed consultation with my office and all health service providers affected by these amendments

before they go into place. There are, as I said, already tens of thousands of health service providers who participate in this shared electronic health record, and this bill will open that up, frankly, in ways none of us can understand because it's going to be exponential in terms of who gets access to Albertans' health information.

Commissioner Clayton said:

The proposed amendment appears to open the door for . . . health service provider[s] in any part of Canada or beyond to also be granted access to Netcare to provide [health services] to an Albertan. For example, access to Netcare to enable out-of-province or out-of-country virtual healthcare may be contemplated.

You know, that's something that I think Albertans would want to weigh in on and have discussions about before this bill is passed. Frankly, I don't remember, as my colleague from Calgary-Mountain View talked about previously in debate, this being a platform commitment with regard to changing Alberta health care, Alberta Health, so drastically that we would allow out-of-country virtual health care providers to compete in this province.

Mr. Chair, with regard to these amendments brought forward, both A1 and A2 – A2 we're on now – I support the recommendations in A2, and I would hope that members of the government would listen to the expressed wishes of the Privacy Commissioner, who has outlined in an eight-page document to all Albertans her concerns with Bill 46, Health Statutes Amendment Act, 2020 (No. 2). The independent officer is here to give advice. That person is giving advice. I certainly will support the amendment on the floor.

Thank you.

The Deputy Chair: Thank you, hon. member.

I see the hon. Member for Edmonton-Glenora has risen on A2.

Ms Hoffman: Thank you very much, Mr. Chair and to the members of this Assembly for the opportunity to engage in a process that will, if approved, absolutely make this bill less bad and a little bit better. As prior colleagues – the members for Edmonton-City Centre, Edmonton-Whitemud, and Calgary-Buffalo – mentioned, this is flowing directly from feedback that this Assembly has received from an independent officer of this Assembly, somebody who reports directly to us who has highlighted some significant privacy issues with the bill as proposed and the lack of consultation with her office and an opportunity for us to make improvements to this bill to ensure that it limits some of the risk that the government is choosing to take on behalf of Albertans.

I can't help but reflect on some of the signs that I saw this weekend from the protests in Calgary that talked about My Body, My Choice. It's interesting that the Premier, who seems very keen to have people parading down the streets unmasked in large numbers and in close proximity, says how important it is to hear their message there in that regard, but when it comes to their health information, their choice, this place is mum, right? This place has nothing to say about the health information of Albertans and why it is that the government has chosen to take away an individual member's ability to safeguard their own public health information.

At the same time as we're considering this – and the government is certainly choosing to leave Albertans exposed, as some members of the government are choosing to leave certain parts of the respiratory system exposed from their masks. I guess that's their choice, but definitely, if we're doing curriculum updates, already in the bio 20 curriculum the nose is part of the respiratory system. I think it's good for people to remember to try to do their best to keep their noses within their masks.

We've heard loud and clear from the Information and Privacy Commissioner and independent officers of this Legislature that this legislation needs work, and one of the specific areas that needs work and one of the most obvious problems is the wording around "authorized user." I think that through this thoughtful amendment that's being proposed by Edmonton-City Centre and with our caucus in support, this has the potential to put some parameters around what that means and make sure that there is a definition, not in the bill necessarily. We're giving this an enabling opportunity through regulations to define who "authorized users" are, because I think it's important that we at least be open with Albertans. If we're going to choose to allow others to access their information, what categories of users will be allowed to access that information and in what ways?

This is definitely an olive branch, not dissimilar to the olive branches that were reached out a few months ago, at the beginning of the pandemic, when Bill 10 was brought before this Assembly. There were definitely a lot of folks, you know, raising alarms and saying: these are concerns we have around Bill 10 and the decisions that were being made by the government at that time. Here we are amending a similar piece of legislation. Other folks are raising alarms and heightening awareness around the risks that are being taken with Albertans and their health care information.

In the spring the government definitely, you know, forged ahead full speed and pushed Bill 10 through, and then they had to create a special committee to review the implementation of said legislation and to consider ways to really scale that back. While I happened to be on that committee and we came up with a number of recommendations, most of which the government members voted down, the minister at the end of the day did accept some of those

recommendations on his own to help address some of the most egregious parts of what was in Bill 10.

Here we are doing the same on this piece of legislation. We're giving you a very clear opportunity to say that you have reflected on – the most generous phrasing would probably be "mishap," and the most accurate would probably be "strongheadedness" – the spring legislation and assumed that you didn't need to consult, that you didn't need to talk to experts in the community about the changes that you were making in Bill 10. Here we have the same type of arrogance demonstrated in this bill. I would say that in terms of this legislation I would request that the government seriously consider this amendment, an amendment which enables Executive Council, through the provision of regulations, to be able to put forward specific definitions – it doesn't need to be done today, but it would need to be done – to be able to give that clarity.

As my colleague from Edmonton-Whitemud rightfully said, Albertans have a lot on their minds right now. Many are struggling. I think the last report was that 20 per cent of Alberta households with mortgages are in deferral right now because they aren't in a position to be able to pay their mortgage right now. Many Alberta businesses are struggling, and the supports from the provincial government have not been meeting the needs of many, many small businesses in and around our communities. Schools: all grade 7 through 12 students, almost all, because there were some very small exceptions made, have been directed to learn remotely at home on their own or with the support of a teacher through the Internet if they have reliable Internet and good devices. A lot of folks are worried about people they love who have a variety of health conditions, including those who are living in congregated care settings, specifically continuing care, and the fact that in continuing care alone in the last month on average five people died a day. These are the things that are top of mind for a lot of Albertans today. But when this health information becomes an issue down the road, potentially, this will be a major issue. People will look back on our records to see where we all voted and how we all stood in terms of our values and the decisions that we made with regard to their own personal and private information.

9:00

So this is really an opportunity and an olive branch for us in this place to say: "You know what? We reflected on what happened in the spring; we're not going to make the same mistake twice even though the government carries the majority, the private members carry the majority in this place." We have a smaller cabinet than we do total number of private members, so it's an opportunity for all of us as private members to really be that sober second look at the legislation that's being proposed by colleagues and Executive Council and through cabinet to be able to say, you know: "Does this actually make sense? Will this actually live up to the values that I campaigned on previously?" Right now I have grave concerns that this legislation doesn't. It certainly doesn't respect the My Body, My Choice when it comes to health information principles.

Let's not leave Albertans exposed to greater risks interjurisdictionally. As has been highlighted, Alberta has had a long history of being very prudent with the health legislation that we had in place with regard to personal and private information, so let's not go down a path that doesn't reflect those values of being cautious and careful when considering people's personal and private information. Privacy breaches are something that are not looked upon fondly by this society as a whole, and this is potentially giving a huge laneway for folks to drive major privacy concerns forward but for it to be legal because the government has failed to define through legislation who authorized users would be. So let's tell the government that this amendment is going to go through, that

they're going to work on defining authorized users in regulation, and that we respect the personal and private information of the folks that we represent.

Thank you for the amendment to my colleague from Edmonton-City Centre and for consideration of it to all members of this Assembly.

The Deputy Chair: Thank you, hon. member. Are there any other members looking to join debate on A2? Seeing none.

[Motion on amendment A2 lost]

The Deputy Chair: That is defeated, I believe.

Ms Hoffman: Are you sure?

The Deputy Chair: Yes.

But that does mean that we are back onto Bill 46 if there are any hon. members looking to join debate. I see the hon. Member for Edmonton-City Centre.

Mr. Shepherd: Thank you, Mr. Chair. Well, I am 2 for 0 with amendments at the moment, but I will continue to make attempts to make a bad bill better.

An Hon. Member: This one is good.

Mr. Shepherd: Indeed.

I would like to introduce another amendment, Mr. Chair.

The Deputy Chair: As with the previous amendments there will be copies available on the tables at the entrances. If you would like a copy of this amendment, just put up your hand; it will be delivered. This will be referred to as amendment A3 for the purposes of debate. If the hon. Member for Edmonton-City Centre could please read it in for the record, that would be appreciated.

Mr. Shepherd: Certainly, Mr. Chair. Thank you. I am moving that Bill 46, Health Statutes Amendment Act, 2020 (No. 2), be amended in section 60 in the proposed section 56.7(1.1) by striking out "respecting the Alberta EHR" and substituting "respecting access, use, disclosure and retention of health information that is accessible via the Alberta EHR".

Once again, Mr. Chair, the Information and Privacy Commissioner, that independent officer of the Legislature, the expert in privacy legislation and guardian on behalf of Albertans of the same, has been absolutely clear that this legislation needs work. It needs to be fixed, so we're bringing forward another amendment to address another of the serious concerns that have been raised by her office, by the public, and, indeed, by other health care experts.

Now, this amendment gets at the removal of the definition of the purpose of the multidisciplinary data stewardship committee that makes recommendations to the Minister of Health. Now, to be clear, this committee works with the Minister of Health. Currently in the legislation it states specifically what the role of this committee is. It states that the role of this committee is to make recommendations to the minister with respect to the rules related to access, use, disclosure, and retention of prescribed health information. That is a committee of experts, of stakeholders, of folks that are involved in the system, who work with the minister to ensure that actions taken, changes made, decisions made reflect the best expertise and knowledge regarding the access, the use, the disclosure, and the retention of health information through the Alberta electronic health record.

This amendment would restore that language because this legislation, Bill 46, removes that definition. Again, Mr. Chair, I

don't understand why this government wants to make things more vague, why they would want to take away the clear purpose of this committee. Or perhaps I do. What we have seen with this government, of course, is that they did not consult with the Information and Privacy Commissioner about this legislation. They did not talk to the provincial expert. They did not talk to the individual that acts as an independent officer of this Legislature to provide recommendations to each of us as members and acts, as I said, as the guardian of Albertans' privacy and information rights.

The minister did not have a conversation. He did not go to her to speak about this. He did not in any way engage with her about the bill he intended to bring before this House. There is only one real reason for that, Mr. Chair. It's because he did not wish to hear what she had to say. He was more intent on moving forward with what he wanted to accomplish than with actually ensuring that what he wanted to accomplish was in the best interest of Albertans, would be compliant with legislation, would not have any issues or errors or create further complications.

Likewise, I cannot see any reason for removing this clear definition, this clear mandate for this committee whose interest, again, Mr. Chair, is that of the people of Alberta, other than that he's not interested in hearing what they have to say. He is not interested in having any form of accountability on the power which he wishes to award to himself.

This amendment seeks to set that right, to provide, again, clear accountability, a clear definition within the system, a clear function for this committee to protect the best interests of Albertans. That's what this amendment would do, to restore the language saying that this committee exists to provide advice on the rules related to the access, use, disclosure, and retention of health information. Mr. Chair, it's merely advice. They provide recommendations, much like the chief medical officer of health has been providing to this government since the spring, though certainly we have seen good reason to question how those recommendations have been received. Perhaps such is the case here. The minister has simply decided that he'd rather not even let them – rather, that they did not even have just that clear mandate to provide that advice.

9:10

Mr. Chair, checks and balances in a democracy are incredibly important. They are essential, as we have seen south of the border how important it is to have checks and balances to rein in those who would abuse power. Now, in this case, again, this committee has existed to help ensure that our Minister of Health, whether the current minister or any previous minister or any future minister, would have the advice of an expert panel because, frankly, we don't know everything.

I'm sure all of us as members will acknowledge the vast amount of information, the vast amount of things that we have to process as members, the incredibly vast pieces of legislation, the many, many areas that we have to work with. Having advice and recommendations from experts is essential in us doing our due diligence in this job. We need to have safeguards in place. We need to have clear systems in place to ensure Albertans' health information is protected. That's fundamental, so it's absolutely perplexing to me, particularly in this day and age, as was ably laid out by my colleague from Edmonton-South, when digital information is growing increasingly complex, increasingly portable, and is considered increasingly valuable, especially when we were talking about it crossing jurisdictions, as this government is seeking to allow it to do, that we have clear checks and balances systems in place to protect Albertans.

I get it. It's clear this legislation was rushed. This government has its agenda for the health care system, and they want to get on with

it, pandemic or not, so under the cover of the pandemic, at a time when Albertans are deeply concerned for their own health and safety, they are forcing this legislation through without careful thought. I get it. They've got things they want to do, but we have to be careful because it's in that kind of a rush that details can get missed, whether small details or big details, as we saw in Bill 10. That's why we're bringing forward this amendment.

I'm hoping this was a matter of oversight. Of course, we know that this government has done this in many cases with Bill 30 and, again, removing the independence of the Health Quality Council of Alberta in its work to, in very similar ways, provide advice to the minister and monitor the quality of the health care system and the impacts of government decisions and policy. We saw this government take away their independence, take away their reporting to all 87 members of this Legislature, and instead have them report directly only to the Minister of Health and give him much more sweeping power over directing their work. In some senses it's par for the course, but maybe in this case this is simply an oversight, so we're giving the government the opportunity to correct it.

Let's ensure that this multidisciplinary data stewardship committee exists and has a clear role and mandate that Albertans can look and know exactly what purpose they serve and the committee themselves can enact that work clearly, knowing what their mandate is, to help the minister make better decisions on behalf of the people of Alberta when it comes to their private health information. This amendment is straightforward, reflects the feedback from the commissioner, the independent officer of this Legislature, feedback from experts, and feedback from the public. Let's fix this and make it better.

Thank you, Mr. Chair.

The Deputy Chair: Thank you, hon. member. I see the hon. deputy government House whip and Member for Cardston-Siksika has risen.

Mr. Schow: Thank you, Mr. Chair. I appreciate you recognizing me. I think we've had some great debate on this Bill 46 this evening in Committee of the Whole, but at this time I move that we adjourn debate.

[Motion to adjourn debate carried]

Bill 35

Tax Statutes (Creating Jobs and Driving Innovation) Amendment Act, 2020

The Deputy Chair: Are there any comments, questions, or amendments, I believe, to be offered at this time? I see the hon. Member for Cardston-Siksika has risen.

Mr. Schow: Why, thank you again, Mr. Chair. I appreciate you recognizing me this evening at this fine hour. At this time I also move to adjourn debate on Bill 35.

[The voice vote indicated that the motion to adjourn debate carried]

[Several members rose calling for a division. The division bell was rung at 9:16 p.m.]

[Fifteen minutes having elapsed, the committee divided]

[Mrs. Pitt in the chair]

For the motion:

Allard	LaGrange	Reid
Armstrong-Homeniuk	Lovely	Rowswell

Copping	Madu	Rutherford
Glasgo	McIver	Schow
Gotfried	Orr	Singh
Guthrie	Panda	Smith
Hanson	Rehn	Yao

Against the motion:

Engen	Nielsen	Sabir
Ganley	Pancholi	Shepherd
Hoffman		

Totals:	For – 21	Against – 7
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[Motion to adjourn debate carried]

Bill 48

Red Tape Reduction Implementation Act, 2020 (No. 2)

The Chair: Are there any members wishing to speak? The hon. Member for Edmonton-Decore.

Mr. Nielsen: Well, thank you, Madam Chair. Appreciate the opportunity here this evening to continue adding some comments around Bill 48, the Red Tape Reduction Implementation Act, 2020 (No. 2), the second piece of omnibus legislation, of course, that the Associate Minister of Red Tape Reduction has brought forward to the House, something, of course, that he was very, very clear, back in the 29th Legislature that he was not in favour of, you know, felt that it wasn't appropriate, it didn't allow the opposition at the time to properly consult on it, and felt it did a disservice to Albertans to mash a whole bunch of things together.

Of course, the bill I was referencing back then was a labour bill where all the changes were encompassed within the one ministry whereas here in Bill 28 we have 12 to 14 different changes encompassing eight different ministries. What we've seen within Bill 48 seems like a lot of odds and ends from ministries that – I don't know if they didn't want to put some of them in a statutes amendment act or whether they just didn't feel like spending the time to deal with them and maybe just kind of passed them off to the red tape ministry and said: here, why don't you deal with that and call it red tape.

Yet when we look at some of the changes like taking away the Alberta Centennial Medal Act – you know, the whole premise of creating the red tape reduction ministry was for the red tape minister to look across government, see what kind of red tape can be eliminated so that job creators could work faster and be able to create jobs. So I'm wondering how removing the Alberta Centennial Medal Act creates jobs. How does that allow businesses to move faster and be able to grow their businesses? Quite honestly, I think the answer is nothing. It hasn't created jobs. It hasn't created streamlined systems for business. How can we actually call that red tape reduction? I would say that it's housekeeping, absolutely. If it's an act that's not used anymore, if it's simply outdated or perhaps the language doesn't fit the times that we find ourselves in, absolutely, I would say that that's housekeeping. You could place that within a statutes amendment act and deal with that quite quickly.

[Mr. Reid in the chair]

We do see quite a lot of different changes across here. One that I haven't really had the opportunity to speak a whole lot around is the Wills and Succession Act. We saw some changes around that in the last red tape bill. You know, I guess I'm kind of wondering: why is it back here before us again? Why didn't we get those changes back the first time? I can't help but wonder if perhaps there was maybe

a little bit of a rush to try to put something on paper so that the associate minister can say: well, look at the wonderful work that I'm doing so Albertans won't be angry at me for spending \$13 million of their money over the course of the term. I guess when you're under that kind of pressure, you need to produce some kind of results.

These are some of the things that we are seeing here: changes around land and property rights, new-home buyer protection, things like that. I do know, of course, sitting on the committee for private members' business, that we've seen a bill that deals with property rights. I have to wonder what kind of interaction happened between the member and the ministry. Hopefully, none of the language that's contained in both ends up butting up against each other, creating some other problems which end up bringing it back to the House so that we'll be able to fix that, something that I, of course, also remember members of the government bench, members of the government caucus who also served in the 29th Legislature were quite quick to berate the former NDP government for doing when those kinds of things happened.

Of course, we did see an amendment that came forward around changes to the MGA contained here in Bill 48. Now, while I certainly do appreciate the amendment that was brought forward by the Municipal Affairs minister to clean up that language, again, were we rushing simply to put something on paper so that we could look Albertans in the eye and say, "Your \$13 million is getting spent well; don't worry about it; we've got this"? But here we are making some changes to that.

Now, the other big thing that I'm very concerned about around Bill 48 is that not only do we have, of course, what I've called a bunch of fluff grouped together with some changes that create some very significant concern with regard to the Municipal Government Act and municipalities' ability to make decisions around how they use the land within different neighbourhoods; then we are putting that in, of course, with a bill that's dealing with the Child, Youth and Family Enhancement Act.

[Mrs. Pitt in the chair]

Of course, we did hear from the minister responsible for that. I do remember – as I've always said, I'm always willing to give credit where it's due – that she brought forward some stories with regard to that which I think are very, very powerful. That gives us the opportunity to see how legislation could potentially affect people in a positive way, or of course conversely we can show how legislation can affect them negatively.

9:40

The problem is that when you take this kind of omnibus legislation which we're seeing – and there has been a pattern. We see legislation that maybe doesn't necessarily mean so much with regard to how it'll affect everyday Albertans' lives, how it will affect their businesses, things like that. Then we pack in something that's really, really good, you know, or at least something that will be of benefit to Albertans, but then you also pack it in with something that's very, very bad. We have that situation here. We have a couple of pieces of legislation now that are butting up against each other. Well, do you vote in favour of this because it's good, or do you vote against it because this over here is bad?

I think that we're in a situation with regard to changes to the Municipal Government Act where it is very negatively going to affect Albertans. Now, obviously, it not necessarily directly affect them, but their municipal leaders, which they've elected to represent them at that level, now potentially find themselves in a situation where if they make a decision with regard to reserve land,

whether in new developments of a municipality or even in areas which are older – you know, I can speak to the neighbourhood that I live in. We have some land that's there, and I know very clearly from speaking with folks over the course of the last six years that people are very grateful for those green spaces that are there. If we find ourselves in a situation where the municipality said, "Well, we're going to do this with this piece of land," and perhaps developers don't necessarily agree with that decision, well, now they have the ability to go around these municipal leaders, who were duly elected by the people that live in their areas, and they can get a different decision from the province strictly because, well, it might be better for the developers. It might not be better for the municipality. It might not be better for Albertans. As I'd mentioned before: well, I didn't get the answer I wanted from dad, so now I'm going to go and get the answer, hopefully, I want from mom. Whatever that encompasses, I think, does a very big disservice to Albertans.

We find ourselves here with legislation in the form of Bill 48, the second red tape reduction act. You know, because of those changes that are being proposed here around the MGA, it is very, very difficult for me to support that kind of legislation simply because of the impacts it's going to have on municipalities, not just the city of Edmonton but any municipality within the province of Alberta. There's now the ability to set up and go around those duly elected leaders. I'm hoping that as we move forward, perhaps we'll get a chance to maybe have some members of the government see the light, realize that perhaps what they're doing is not in the best interests of Albertans. Perhaps they might want to consider pulling out the language around the child, youth, and family act that could potentially be useful and voting on that separately.

With that, for now I will take my seat, see what other debate comes up, and it's possible I may have more to say on this in Committee of the Whole.

The Chair: Hon. members, I see the hon. Member for Cardston-Siksika.

Mr. Schow: Well, good evening, Madam Chair. It is wonderful to see you and be here with you this evening as well as all the other distinguished members in this Chamber. At this time I move that we adjourn debate on Bill 48 and rise and report progress on bills 46, 35, and 48.

The Chair: First, have a vote to adjourn debate, and then another motion will be needed.

[Motion to adjourn debate carried]

The Chair: The hon. Member for Cardston-Siksika.

Mr. Schow: Thank you, Madam Chair. I believe now is the time for me to ask or request that we rise and report progress on bills 46, 35, and 48.

[Motion carried]

[The Deputy Speaker in the chair]

The Deputy Speaker: The hon. Member for Fort McMurray-Wood Buffalo.

Mr. Yao: Thank you, Madam Speaker. The Committee of the Whole has had under consideration certain bills. The committee reports progress on the following bills: Bill 46, Bill 35, and Bill 48. I wish to table copies of all amendments considered by the

Committee of the Whole on this date for the official records of the Assembly.

The Deputy Speaker: Does the Assembly concur in the report?

Hon. Members: Concur.

The Deputy Speaker: Any opposed? So ordered.

The hon. Minister of Justice.

Mr. Madu: Thank you, Madam Speaker. I do want to thank all members of the Assembly for their hard work today. At this point I wish to advise the Assembly that pursuant to Standing Order 3(1.2) there shall be no morning sitting tomorrow, Tuesday, December 8, 2020.

With that, I move that the Assembly be adjourned until 1:30 p.m. on Tuesday, December 8, 2020.

[Motion carried; the Assembly adjourned at 9:47 p.m.]

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