Legislative Assembly of Alberta

The 27th Legislature
First Session

Standing Committee
on
Health

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1:01 p.m.

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Standing Committee on Health

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1:01 p.m. Wednesday, July 9, 2008

[Mr. Horne in the chair]

The Chair: Good afternoon, ladies and gentlemen. Welcome to this meeting of the Standing Committee on Health. My name is Fred Horne. I'm chair of the committee. Our deputy chair, Bridget Pastoor, will be joining us in just a moment. I'd like to thank you all for coming. If we could, we'll just begin by going around the table, and I'll ask each member or official to please introduce himself or herself.

Mr. Vandermeer: Hello. I'm Tony Vandermeer, MLA for Edmonton-Beverly-Clareview.

Mr. Dallas: Good afternoon, everyone. Cal Dallas from Red Deer-South.

Ms Dean: Shannon Dean, Senior Parliamentary Counsel.

Mrs. Kamuchik: Louise Kamuchik, Clerk Assistant, director of House services.

Dr. Massolin: Good afternoon. I'm Philip Massolin. I'm the committee research co-ordinator, Legislative Assembly Office.

Ms Stewart: I'm Katrina Stewart, a research assistant with the Legislative Assembly Office.

Ms Friesacher: I'm Melanie Friesacher, communications consultant with the Legislative Assembly Office.

Ms Sorensen: Rhonda Sorensen, manager of communications services with the Legislative Assembly Office.

Ms Bentz: I'm Cindy Bentz, and I'm the Public Trustee.

Mr. Bowes: My name is Rick Bowes, and I am a lawyer providing assistance to the Public Trustee on this matter.

Ms Doyle: My name is Brenda Lee Doyle. I'm the provincial director of the office of the public guardian.

Ms Gray: I'm Holly Gray. I'm with Alberta Justice, in-house counsel with Alberta health.

Mr. Chamberlain: Martin Chamberlain, corporate counsel, Alberta Health and Wellness, and acting assistant deputy minister of corporate operations.

Mr. Mill: Hi. I'm Tom Mill, assistant deputy minister with Alberta Health and Wellness.

Ms Notley: Rachel Notley, MLA, Edmonton-Strathcona.

Mr. Quest: Dave Quest, MLA, Strathcona.

Mrs. Dacyshyn: Corinne Dacyshyn, committee clerk.

The Chair: Thank you all very much.

Just a few housekeeping rules before we start. I've been asked to remind you that it's not necessary to touch the microphone. If you wish to speak, the microphones are controlled centrally by our technical staff in the back, so the microphone will come on and off automatically for you. Also, just to ask you, if we could, that if you have your BlackBerry turned on, please take it off the table. The sound system picks up sending and receiving signals from the BlackBerry. We are a live audio stream on the Internet, so I'd just ask for your assistance with that as well. I guess the other thing is that we don't allow the use of cellphones in the committee room when the committee is in session, so if you find it necessary to make a call, there are anterooms outside, and I'd ask you to make use of those, please.

Dr. Swann: David Swann, Calgary-Mountain View.

The Chair: I'll be right with you. Sorry, David. I forgot that we have three members participating by phone today. My apologies. We can start with Dr. Swann. Would you introduce yourself, please?

Dr. Swann: Sure. Good afternoon, everybody. David Swann, Calgary-Mountain View. Beautiful Stampede weather.

The Chair: Mr. Denis, are you on the line?

Mr. Denis: Yes. Jonathan Denis from Calgary-Egmont. Also good weather here.

The Chair: We also have Kyle Fawcett on the line. Is that correct?

Mr. Fawcett: Yeah. Kyle Fawcett, Calgary-North Hill.

The Chair: Okay. Thanks. My apologies to those three members.

I think that's all we have in terms of housekeeping items, so we'll move on to the approval of the agenda. May I have a motion to approve the agenda, please? Any discussion? Ms Notley.

Ms Notley: Thank you. I'd just like to add one item under Other Business. If we could address that under number 8, I'll just call it public health officers.

The Chair: Thank you.

Any other discussion? Those in favour? Opposed, if any? Carried. Thank you.

The next item is adoption of the minutes of the committee meeting of June 18, 2008. May I have a motion, please, to approve the minutes? Mr. Quest. Any discussion? Errors or omissions? Seeing none, those in favour? Opposed, if any? That's carried. Thank you.

As you know and just for the record, the committee is engaged in a review of Bill 24, the Adult Guardianship and Trusteeship Act, referred after first reading by the Legislative Assembly. Our first meeting was an organizational meeting. Today we have devoted the lion's share of the agenda to a technical briefing and some opportunity for members to ask questions of various department officials that we have with us today.

What we've done in planning for this, because the presentation is quite lengthy and, as you all know, the bill is quite thick, is that we've broken the presentation into five parts. The department officials that have joined us from Seniors and Community Supports and Justice and Attorney General have broken this, as I say, into five pieces. We'll briefly pause for questions after each section. We're going to try to use about an hour and then give people an opportunity for a break. After that break I will then come back and ask the committee if there are further questions, things that might have come to mind since the material was originally presented, and again give

you another opportunity to ask some more questions. We just thought it would be a little easier to deal with the bill if we broke it into parts that way. I hope that's acceptable to all.

I want to thank, first of all, all the officials who have joined us today to participate in the briefing and the questions and answers. The two ministries that were present last time, Seniors and Community Supports and Justice and Attorney General, will make the presentation. The officials from Health and Wellness are here today to answer questions, should they arise, about matters that may pertain to that department.

Without any further ado I'd like to turn it over to Brenda Lee Doyle, provincial director, office of the public guardian, to take us through the briefing.

Ms Doyle: Great. Thank you very much. We're very pleased to be here today. The presentation, as the chair has mentioned, is broken up into parts. I will be leading the first couple of sections, and then Rick Bowes and Cindy Bentz will be providing the trustee-related parts.

First of all, I'd like to bring greetings from Minister Mary Anne Jablonski, who would have liked to be here today. She's in Calgary meeting with stakeholders, but she has a few comments that she's asked me to share. This legislation, the Adult Guardianship and Trusteeship Act, replaces the Dependent Adults Act, which is 30 years old. The attempt is to meet the needs of vulnerable Albertans by having a right balance between autonomy and protection. That's what we've tried very hard to do. This legislation is complex because it is about individual people and the diversity of their lives. I appreciate the committee members' work over the summer studying the bill and seeking further feedback from Albertans, and I look forward to your findings in the fall.

Everyone, I think, has a copy of the PowerPoint presentation. We'll just walk through it. On the second slide is that the purpose of the presentation today is to provide further information on the consultations. On June 18 we touched on the different types of consultations. We'll provide a little bit more information on that today. We'll also go through the major provisions of Bill 24 and talk about how it relates to the Dependent Adults Act, which is the act it replaces, and provide an opportunity for questions.

Just going on to the agenda, page 3, we'll look at the context of the legislative review from both a national as well as an Alberta context, an overview of what the Dependent Adults Act has provided, the consultation, and the major provisions. That didn't take me too long with a couple of slides. The rest are more meaty.

The fourth slide is about the national context. There is legislation in every province in Canada and the Territories around when people have lost their capacity. It's at various stages. Some of the legislation dates back to the '50s, and others have been modernized over the last couple of years.

1:10

Of the legislative reforms that have happened, the most significant would be in the late '70s, which was the development of the Dependent Adults Act. Alberta led the way in changes to looking at mental capacity as well as guardianship and trusteeship. The major change that happened was looking at that capacity was not a global capacity, that it was tailored to the person's individual needs and that there were different personal matters.

In the '90s there was major legislative reform in Ontario and B.C. and Manitoba. I'm not going to get into too much of the changes because that's going to be covered in the cross-jurisdictional, but certainly at that time health care consent and the ability for family members to make decisions about facility placement and some of the protective provisions around investigations came forward.

In 2000 and the last couple of years there have been major reforms around providing for more supported decision-making tools. That is what we see out of Yukon, supported decision-making agreements, and out of Saskatchewan, the codecision-making.

Just to look at some of the societal shifts. The Dependent Adults Act happened before the Charter of Rights and Freedoms. What has happened over a number of years is that there has been a significant shift towards the liberty of the person and freedom. There has also been an increased advocacy of the people who would be dependent adults. People who have developmental disabilities are much more organized; so are their families. They've asked for a lot more community inclusion, inclusion in education, and that is reflected in the changes that we've had. We've also seen shifts in families away from decision-makers and providers of all supports to taking more in terms of an advocacy approach. Government has had a shift as well from more of an oversight body to looking at how we make decisions for only those where the families do not step forward.

Going on to the next slide, looking at the Alberta context, as all of you know, there is an aging population. Right now, as of the census of 2006 there were over 350,000 Albertans who were over the age of 65; by 2031 that will rise to 1 in 5. So it's about 10.7 per cent right now, but it will be 20 per cent in 2031. Alberta has the most increasing number of seniors who are moving to the province after B.C. For adults who may need a guardian or a trustee, we see that as an increasing demand.

Also, the changing role of families. Previously families stayed in one place; they were larger and more rural. What's happening now is that people are living all across the country, and elderly people may be coming more to wherever people are moving. If they're moving to Alberta for work, families are joining them. And the average size of family has decreased.

Decision-making. One of the things that we heard when we were out doing the consultation is that people are looking for a better fit. They're looking for a decision-making choice that fits their lives as opposed to one size fits all. And technology has changed the demands in Alberta. Previously, when the Dependent Adults Act first came into place in 1978, computers took up rooms. Right now everyone is attached by their cellphone in their purse, in their office, in their homes. People have access to information 24 hours a day. Health technology has also changed, and people are living longer.

Slide 6 is: what does the Dependent Adults Act provide? For the last 30 years it has provided for guardianship, which is a court process. A person has to apply to the Court of Queen's Bench to become a guardian. It always had a spirit of a least intrusive, that you shouldn't go for guardianship unless there isn't another tool, and the encouragement of people to plan ahead to name an agent. Family and friends were always preferred over the public body. The public guardian when we act for our 1,900 clients: it's seen as a last resort, where there is no one else to step in. There was always a role for an interested person, who could be a family member or a friend, who was concerned about the welfare of a person who is a dependent adult. They always had the right to call for a review. And the court was always seen as an oversight. It was the body where if people had concerns or there was a dispute, you could go to court. That was the remedy for guardianship.

Trusteeship – and I'm not going to get into it too much because my colleagues will – was also a court process. A trustee can be appointed through court. A person had to be a resident of Alberta to act as a trustee. Trust corporations could be as well, as well the Public Trustee. Interested persons had the same role as in guardianship and the court. There was also a certificate process, which is the noncourt.

On slide 7, looking at what we intended to do in our legislation

when we started the legislative review, one of our aims was to create legislation that was flexible to meet the changing needs of Alberta and our population. The other was to maintain the dignity and the autonomy of people who would be impacted. People who may have some capacity or no capacity: we wanted to make sure that their dignity was maintained. We also wanted to address the concerns we heard that there weren't any protective measures in the Dependent Adults Act other than taking it to court, and we also wanted to make sure that the legislation reflected Alberta's values around independence, strong supportive communities, and diversity.

Slide 8. As part of that process – I talked about that the last time – we had four phases of consultation. The first phase of consultation – I know all the members have got copies of these reports, so I'll just show them – is we did a survey. That was an online and a written survey that was sent out to a number of Albertans, and they had an opportunity to participate. We provided the feedback on the survey results, and it has been up on our website for about three years now.

We also went out to eight different communities across Alberta and held consultations in public. There were 11 meetings, and we heard from about 300 Albertans through those public meetings.

We also held stakeholder consultations, where we asked people who are working with the legislation on a daily basis what the impact of changes to the legislation was and what their recommendations were. That was this document that we provided, and I also had provided a list of some of the stakeholders who attended the focus group sessions that went out to the committee earlier.

We had sessions with dependent adults. There were 10 sessions across the province to hear directly from the people who had a guardian or a trustee on what the impact was and how they wanted things changed.

Then we also prepared under the direction of Cindy Ady, who is the MLA who led the process, a final recommendations' report, which summarized a lot of what we heard from the consultations, the research, and the best practices. That was provided to government, and government made that public in January of 2007.

On slide 9 the final recommendations' report basically synthesizes some of the information we heard and what seemed to be acceptable to Alberta.

I guess I would just pause there to see if there are any questions about the consultation process.

The Chair: Thank you. Just before we take questions, I should have said earlier and I'll just say it now for the record: the documents to which Ms Doyle is referring were made available to committee members via the committee website and are still available there for future reference. So for anyone listening in, those are the documents to which we're referring.

Questions on this section of the presentation?

Seeing none, I'd like to proceed to the next section.

Ms Doyle: Great. Thank you so much. The next section is focusing on what is in Bill 24. On slide 10 is legislation to replace the Dependent Adults Act. When it is proclaimed, the Dependent Adults Act will end. It responds to the changing needs of Albertans; it balances autonomy and protection, focusing on choices for adults and their family, and is also sensitive to the needs of the natural support system as well as the formal support system, such as the health system; and it provides clear oversight and protective provisions. Those are the major intents of the bill.

On slide 11 is a diagram where we try to provide a picture of who in Alberta is impacted by this legislation and how it interacts. If I take you through the circles, the inner circle is the focus of the legislation, which is Albertans. Capable Albertans make up the majority of Albertans, and they have the opportunity to make decisions for themselves, both on financial matters and personal matters. You can decide what you want. You can make good decisions, or you can make not so good decisions. If you're capable, you get to make those decisions. Legislation allows that. Also, as part of capable Albertans they can write a supported agreement or authorization where they can name someone who they would like to receive health information to assist them in making decisions and communicate, and I'll go into that further. That's capable Albertans.

1:20

The other parts of the pie is assisted adult. Those are people with significant impairment, and those are the people who have codecision-making orders. This is a future guess.

The next smaller part of the pie is people who are incapable. Those would be people who are now called dependent adults but under Bill 24 will be called represented adults. Those will be the individuals who have a guardian or a trustee.

The next circle, the purple circle, represents their natural support system. All people receive supports from the community – from their families, from their neighbours and their friends – and so do people who have capacity limitations. That's part of the world. How the community and families are impacted is often that they're providing supports, they're helping people make decisions, and they're often the ones who step in to act as a guardian or a trustee.

The next circle is more the formal support system. That is when a person is seeking out a service or a support, and that's when it involves the health system, residential services, and social services, where people have to receive something. The service providers often need someone to make consents if a person has lax capacity. They're seeking out a consent from the people who are the decision-makers.

The last, green circle is around the oversight and the protective. The courts provide a protective role – OPT, OPG, lawyers – and they step in as need be. That circle basically is: how are Albertans impacted in the various roles?

Going on to the next slide, slide 12 is looking at the guiding principles. In our consultation with Albertans we heard over and over again that it's helpful to have some overriding principles so that people would know what they're supposed to do. Often guardians or trustees who are stepping into the role are good citizens, and they're taking on the role in the best way they can, but they and service providers, too, wanted some guidance about what they should be thinking about where it's not legislated.

The first guiding principle is about capacity. It's that an individual is presumed to be capable until they've been determined not to be. Just because a person has a disability doesn't mean they're incapable. They have to be assessed to be.

The next one is about the matter of communication. If the person has a communication difficulty – if they're deaf or if they have cerebral palsy – that isn't evidence that they lack capacity, and efforts need to be made to include them in communications around decisions.

The next principle is about autonomy, the right for a person to make as many decisions about their life as possible and that other least restrictive, least intrusive methods should be tried first before you go to the more formal measures.

The next one is how decisions get made if a person is incapable. That's the guidance to say that decisions need to be made in the best interests of the person and that the decision-maker needs to be thinking about what the person would have done if they were capable, their wishes, their values, and beliefs.

Slide 13 provides a diagram on the continuum of decision-making

choices and the range of capacity. If you look below the blue arrow, that is the range of capacity that we talked about before. It goes from fully capable, where you can make all the decisions for yourself, up until the point of incapable on a long-term or a more permanent basis.

The green boxes are around what types of decision-making tools may support people. If you're a capable person, you make decisions for yourself; you may also want to have a supported decision-making authorization. If you're significantly impaired, which is kind of that grey area where a person could be starting to have problems or there may be early stages of Alzheimer's where they can't make decisions on their own, that's where a codecision-making order comes in. If the person is temporarily incapable, perhaps from a car accident or they're in a coma, that is when there is no other agent or a guardian to step in for personal matters, then the tools that are available in Bill 24 is having a family member step in for specific decision-making or emergency decision-making, which is the physician role. If a person is assessed to be incapable and it looks to be a permanent situation, that is where guardianship and trusteeship comes in. The temporary guardianship or trusteeship is when there's some urgency to the situation. So the continuum ties very much to how the person has been assessed for their capacity.

Slide 14. The key concepts, again, are: capacity is on a continuum, there are decision-making options that are determined by the level of capacity the person has to make decisions and they're governed by the guiding principles around least intrusion, and there are protective measures.

I'm now going to the first step on the continuum, which is on slide 15, on supported decision-making authorizations. This is a new tool for Alberta. It's very similar to a tool that is in the Yukon, and it is an option for capable Albertans who need some assistance with their decision-making, so that ability to receive information and help communicate it. In the bill we've built it that there's going to be a prescribed form, so it's very simple to prepare. It won't be costly – there will be no cost associated – and the person who is authorizing someone is the person in control. They make the decisions, and they can choose to end it if they no longer want to have it.

That's basically how the supported decision-making authorization works. In the Dependent Adults Act we had nothing similar. There was no comparable tool that would allow someone to step in. Under the Personal Directives Act you can name an agent, but that person only takes decision-making or assists in decision-making after you've been determined to lose your capacity. So this is for capable people. What we heard from immigrant communities and disability communities is that they feel that this would be just enough support to help them, seeing decision-making as a process rather than an outcome.

Why is this tool important? It allows for the sharing of relevant information with the supporter to assist in decision-making. With various changes in privacy legislation it's difficult for someone who is outside of the adult, a family member or friend, to receive that information, to accompany them. It also enhances Albertans' ability to be as independent as possible, to have just the right fit. It supports the guiding principles around the presumption of capacity, supporting that a person's communication may be a barrier, but this is another way of assisting around that barrier and the preservation of autonomy.

The next tool on the continuum is the codecision-making order. While a supported authorization is something that can be done with a piece of paper – there is no need for a lawyer to be involved although they could be – a codecision-making order is something more. It is a court order. It's very serious. There has to be a capacity assessment that needs to be done to ensure that the person has been properly assessed. That person has to be seen as having a significant impairment. That means that they still have some capacity to make decisions, but they can't make decisions on their own.

The adult and the codecision-maker is a relationship of trust. The person chooses their codecision-maker; they consent to the order. If they no longer consent to the order, the order ends. So there's a lot of control in the adult in a codecision-making order, like a supported decision. It has to be in the best interests, and it is limited to the areas where the capacity assessment has indicated that the person needs some assistance. It doesn't have to be for all personal matters; it could be for very targeted matters. It could be just for making a decision on where the person is going to live or their health.

Saskatchewan has had this tool for a number of years, and in Saskatchewan they have it for both personal and property matters. In Alberta we've chosen to have it for personal matters because it's a new tool.

Why are codecision-making orders important? What we've heard is that guardianship, while it meets many people's needs, can be a blunt tool for those who haven't fully lost their capacity. People need something a bit less. It's seen as less intrusive than guardianship for those who retain their capacity.

1:30

What we heard from a lot of people with developmental disabilities, with mental illness or progressive illnesses such as Alzheimer's: it would provide that step before there is more impairment, particularly for Alzheimer's. It respects the relationship that people have with their natural supports. In the codecision-making order the public guardian cannot act as a codecision-maker. It's specifically targeted for relationships that are long standing: family and friends. And the consent provision maintains that autonomy of the person so that if something is not working, they can end the arrangement.

If anyone has any questions about those.

The Chair: Any questions on this section?

Ms Notley: You probably have more important questions than I do anyway, but I'll be quick. I'm just wondering: the supported decision-making, not the codecision-making option, does it exist in any other jurisdictions?

Ms Doyle: It's in the Yukon.

Ms Notley: In the Yukon. How long has it been there?

Ms Doyle: For a couple of years.

Ms Notley: Okay. And with the codecision-maker option, I think you answered my question. If they can't agree, if they can't come to a consensus, I take it the mechanism for addressing that is that the represented adult withdraws consent.

Ms Doyle: Well, I think that before then what we've built into the legislation is that if there is a dispute between the assisted adult and the codecision-maker, the codecision-maker has to look at whether or not that is a reasonable decision. It may not be their preference, but if a reasonable person would make that decision, then they have to acquiesce to the assisted adult. The lean is to allowing the adult to make decisions that are reasonable.

If it's a significant dispute – they can't agree, and it's about something that's pretty important – they can always take it back to

court for advice and direction. Or the adult, if they're saying, feel that the person, they can't work with them anymore, they can withdraw the consent, and so can the codecision-maker.

Ms Notley: Is there a body or a mediator that assists the codecision-maker in identifying that which is reasonable even though it may not be the codecision-maker's preference?

Ms Doyle: There's no set body. The office of the public guardian often has that role with guardians, that if there is a dispute, people will call and say: help me work through the situation. I expect that similar would happen with codecision-making, but we would look to the codecision-maker working with the adult and also consulting family or service providers.

Ms Notley: I just had one final, quick question. When you looked at the guiding principles, is there a plan to define or flesh out best interests somewhere?

Ms Doyle: Best interest is in many ways defined within the guiding principles in that we consider it part of what a capable person would have done and their values and beliefs. It still has an overarching, but we wanted to provide more guidance to the term around going back to what the adult would have done. That's why it has an (a) and a (b) to it.

Ms Notley: Right. Okay. Thanks.

The Chair: Thank you.

Mr. Olson: My question was regarding the codecision-making order. The person needs to be significantly impaired. It seems to me that we're just walking a very fine line. I don't disagree with the approach, but I'm curious about the discussion that might have gone on. We've got a person who is significantly impaired, yet they have to consent. If they're impaired, how do they give an informed consent? There's a bit of tension there between those two things, I would think. I'm just curious to know what the experience has been in other jurisdictions, if any, if you've got any information on that.

Ms Doyle: In Saskatchewan the codecision-making order is a little bit different than our approach. The court has to consider a codecision-making order before guardianship. You apply to be a decision-maker, and then the court, based on the application, can choose it to be either codecision-making or a guardianship, so the consent isn't such a key part of it. We built it as more a stand-alone application based on the time that a person, their capacity is impaired but not quite a guardian.

Mr. Olson: How about the question of undue influence? Does that come into play here at all, then? I mean, quite often you'll have people who may be open to suggestion. They're very reliant upon somebody who's very close to them. That's probably the person who's going to be named. Is any kind of review of that question part of the process?

Ms Doyle: As part of the court process for guardianship, trusteeship, and codecision-making a person will apply. Then they will have to supply certain information to a review officer. The review officer will go out and meet with the adult about the application. They would go and meet with the assisted adult, find out their views, so there's another opportunity to see from the person whether or not they've been influenced. We also will ask as part of the regulation certain information to be provided around screening of suitability. That would be around criminal records check, character references. Part of that process could bring to the attention that someone is trying to, you know, influence the person. The review officer will supply an input, a report to the court on every single application. So the safeguard is really around getting another independent person to get their views.

Mr. Olson: Thank you.

The Chair: Are there questions? Ms Pastoor.

Ms Pastoor: Thank you, Mr. Chair. I'd like to just probably go a little further than that with this particular dilemma because, really, what that can grow into is elder abuse. Unfortunately, a lot of the elder abuse is done by family members, and I'm not sure how we can get around that. I'll just use a case in point that's sitting on my desk right now. Again, I think that by having this act come forward, we may eliminate a lot of what I'm going to talk about because I have older people who didn't have wills, didn't have directives, et cetera, et cetera.

The woman's husband died in the house. She ran next door. The man next door got all involved by calling the police and getting everything ready for her. The next thing she knew, within two days she was in a care facility in a different town away from there. She has been phoning these neighbours saying, "Come and get me. Come and get me. I'm here again against my . . ." All this kind of stuff. And these people really hesitate to get involved. There is evidently a son and a daughter who are not particularly supportive, and the people that I talked to feel that they're being taken care of. So you end up in this quagmire of he said, she said and family members. I'm not sure how people coming forward – like, I guess where it ends up is: who is going to protect that person in spite of themselves?

Ms Doyle: Well, a couple of tools. One is at screening at the beginning. The other one is that any interested person, if they have concerns about the actions of a codecision-maker, can make a written complaint through our investigation process. If it meets the criteria that they're not following the order and it's causing harm to the individual, that can be investigated. A person will go out and interview all the parties and look at the situation. They can also take it back to court. There are remedies around mediation. So there's a number of new steps that weren't available before.

If there's a concern that the person is taking advantage of the person financially, then that would be where trusteeship – you can have a temporary trusteeship order because often in these situations it's not just about the person, about where they're going to live; it often involves money, too. I think some of the new protective safeguards will assist. It won't rule out all situations where someone may influence or take advantage, but I think that these screening mechanisms and the interventions after the fact are a lot better than what we've had.

1:40

Ms Pastoor: I think, too, the problem is that in this particular case these people who are so concerned are also older and don't want to get mucked up in the system, so they won't come forward. That, again, I think in 10 years may well change because the education level and the understanding of citizenry will come forward. However, I think where we may run into some of this stuff is within some of the later ethnic groups that have immigrated where language is a problem. I think that may be a section that will be different.

Ms Doyle: Uh-huh. Thank you.

The Chair: Thank you.

Any further comments or questions from members on the phone? Okay. We'll move on to the next section then, please.

Ms Doyle: Okay. The next section, on slide 19, is regarding guardianship. You'll notice that for supported authorizations and codecision-maker orders, those are brand new to Alberta; for guardianship it's a revised process. What has happened in Bill 24 is that we've modernized guardianship to reflect the changing needs, but it's in much the same way as it was under the Dependent Adults Act. It's quite familiar.

Guardianship is for people who have been assessed as being incapable of making their own personal decisions. Personal decisions range from health care, employment, vocational, where the person's going to live, who they have access to, legal matters that are nonfinancial: so a range. The expectation is when someone is making an application to go to court, they are only asking for the personal matters where the person lacks capacity, and the capacity assessment guides that. It is a court application, so it would go through a review officer, as I mentioned before. The court hears it and makes the determination of capacity.

Some of the changes that are in the act. We heard from guardians that often they may make a decision about a matter, but it's not enforceable. It could be a decision similar to what Ms Pastoor was talking about. Someone's making a decision about where someone lives, but then the person is leaving or somebody else is taking them out of the facility and wanting to take them somewhere else.

One of the new provisions in Bill 24 is the ability for a guardian to take the matter back to court and ask for a decision to be enforced. That's not going to happen very often, but we've heard from private guardians that it would be extremely helpful. A guardian, when they've made a decision for a represented person, it has the same effect as if the person made it themself. It's an equal authority. It's a substitute, a replacement of the decision, while the codecision-making is that one step down, where they're making it together. When the guardian comes on, they are the decision-maker. That's the difference.

The next slide. Why are some of the changes important? We've retained a lot of the guardianship provisions around having someone step forward, we've added the screening, we've added the ability for multiple guardians to take on the role, we've added teeth to the decisions of the guardian, and we've provided more guidance around how they make decisions on best interests, that they have to go back, they have to inform the represented adult and be able to involve them in decision-making.

Next I'll provide you with some information for situations where there's some urgency to the person and they need to get into court quickly. Under the Dependent Adults Act we always had the ability to get into court without a capacity assessment where there was urgency, but the court didn't specify the limit of it. It didn't happen very often. Certainly, in the guardianship world it was very rare. What we've done in the temporary guardianship tool is try to make it very targeted to when it can be applied because anyone who's going for guardianship, most often they need to go for a capacity assessment to prove that they're incapable.

The fast-tracked approach around going for guardianship to court is the waiving of a capacity assessment and the waiving of the notification of the nearest relatives. In order to do that, the person has to meet the criteria that there's some evidence that the person lacks capacity and the urgency. The urgency is that there's immediate danger of death, serious harm, and the person is believed to be incapable.

When a person goes for a temporary guardianship order, that information goes to the court, and the court can allow for a 90-day period. We have also built in an extension of that. It can be extended for a period of six months. But the intent is to go in for an early application, and it could be a family member; it's not just the public body. They go in, they get a guardianship, a temporary order, and then they go back through the regular process to get a full guardianship order with a complete assessment. So it's a very interim tool to deal with urgency.

Why is this important? The introduction of the 90 days is to allow for that it is for a limited period of time. It's a response to a crisis, and the idea is that during that 90-day period something should be happening, and if there's a further application to court for the extension, there needs to be a plan, or there needs to be a full assessment, or it's determined that the person doesn't need a guardian, so building around timelines is a protective feature. That's the temporary guardianship order.

Next on the continuum, on slide 23, is when a person has lost their capacity on a temporary basis, and this is looking at giving the authority to health care providers to assess whether or not a person is able to make a personal decision. This is only for personal matters, not property matters. The test of capacity in that is whether or not the person understands that the decision is about them. Are they able to understand whether or not there are consequences to the decision? Can they also determine if there are alternatives?

If the health care provider believes that the person isn't able to make a health care decision or a temporary facility decision, they can go to a ranked list of nearest relatives. The nearest relatives are similar to what is listed in the Mental Health Act, and we've also built in suitability criteria that a health care provider would need to look at: the person has to have contact with the person; they have to be a person who's going to act in the best interests; they have to make a written declaration to say that they meet the criteria. So there is a lot of kind of process around it to make sure that that person is going to act in the best interests of the person, and this only applies when there is no guardian or agent. If there is a person who is formally appointed, you go to that person; you don't go to this system.

In the act we also have a list of prohibitions of types of treatment that the specific decision-maker cannot make, such as sterilization or other issues, and in the Dependent Adults Act there was no comparable provision. What we heard often when we went in the consultation is people were believing that family members could automatically make decisions if it was a spousal relation. What we heard from the public is that if something should happen, such as a car accident or a brain injury, where a decision needs to be made quickly and it doesn't allow for the time to go for guardianship, they want their family to be able to make the decision, and as a last resort, if there's no one, that the public guardian would, very similar to the provisions under the Mental Health Act.

We've also built into specific decision-making that there are remedies for the adult. If the adult is not in agreement to being assessed as being incapable, they can ask for a full assessment. They can also ask for a court review, or they can have anyone who's interested in their welfare, such as a family member or a friend, create that review by either a capacity assessment or the court.

On the temporary placement into a residential facility, it's temporary, with the idea that a decision needs to be made now but that for a more permanent decision and the person has lost capacity, then they should be assessed as having a guardian, and a court guardianship application should be made. So these are interim measures to deal with urgency.

1:50

Why is this important? This is very similar to the provisions that are available in Ontario, B.C., and Saskatchewan. The experience in Ontario, which is for the last 15 years, is that this has made people have access to service in a very timely way, and it preserves their rights. After a person has been assessed and a treatment has been provided, each time it has to look at their capacity. They don't go away with the determination of incapacity permanently.

There is currently no legal mechanism if a decision is around physical health care for relatives to step in and make decisions. Often doctors may take the consent of family, but that isn't specified in legislation. This would allow for that easier mechanism, that is often a common practice. With Alberta's aging population what we heard from the public and our stakeholders is that this will meet a need as opposed to having to take it to court.

The next slide, slide 25, is around emergency decisions. These are situations where someone is coming in and two physicians or a physician and a second health care provider need to make a decision quickly around treatment. This is where a person could be in a coma. Maybe they're severely impaired and incapable because of drug abuse or whatever. The physician, when they're looking at the person, assesses that they are incapable of making the decision, and then they are consulting with a second person. Most often that's going to be a physician, but in some areas what we heard, like in Fort McMurray, is that there's not always a physician available and that the second could be a health care provider. This is very similar to what was provided in the Dependent Adults Act. The only area that we've changed is around who can be the second and providing more specification on when you could use it.

Why is this emergency health care necessary? It's important because in many situations you don't have the time to contact someone, and a decision needs to be made quickly. It also allows for that flexibility of the physician reaching out to colleagues to consult about the matter, so it's not one physician making the decision; they have to have a second person. And it's the ability to provide timely emergency treatment.

That's that section.

The Chair: Thank you.

Questions? We'll start with the deputy chair.

Ms Pastoor: Thank you, Mr. Chair. I know that we have discussed it before, but I'd like to get it on the record. One of the things that I felt quite strongly about was that I really feel that that second person – when we say health care provider, I think that the range, in my mind, was too broad. I think what I'd like to see is that it would be either doctors or RNs as that second person because if I'm not mistaken, I think there are OTs. Could I ask you to clarify that, then, for me? Thank you.

Ms Doyle: The intent is that we would define health care provider in the regulations. At this point what we're looking at is that it would be a doctor or a nurse. I think what you're talking about in terms of the broader range of professionals would be around capacity assessment. They would be called capacity assessors as opposed to health care providers.

Ms Pastoor: Great. Thank you very much for that clarification.

Ms Doyle: No problem.

Ms Notley: A few questions. Maybe I'll start with where we just left off. I'm trying to get my head around the distinction between the last three categories we just went through. I thought I had distinguished between the second-last and the third-last categories until you gave me the last one, in which case I thought: "Oh, okay. No, I don't get that distinction any more." I understand that, first of all, maybe, with the temporary guardianship order you've got your 90-day limit, and they can make decisions on whatever areas are determined to be where the person lacks capacity. Then, with your specific decision-making nonorder, is the clear distinction just that the doctor is identifying the person with the decision-making authority as opposed to the court?

Ms Doyle: That's one of the distinctions. For a temporary guardianship order it's a family member probably going forward to identify that there are some personal matters that need to be addressed. It probably relates to more than just health care or where the person's going to live. It probably is a whole range of needs. That's why they're going with that urgency of situation. It could be around access.

Ms Notley: Is there a timeline with respect to the ones where the doctor appoints or identifies someone? Is there a time limit?

Ms Doyle: It's really specific to the decision. If a person is making a decision around surgery, it's about that decision. That's the timeline of the decision. The health care provider is choosing a family member for that particular decision, and after that decision is over and the person regains their capacity and things are back to normal, then the person goes back and makes decisions. If there's a longer period where the person is not able to make decisions and there are more decisions, then the health care provider has to go through seeing if they can make the decision and if not, choosing someone.

Ms Notley: I'm a little concerned that that process could turn into a very long process without any review by a court or a third party. It doesn't have the same safeguards built into it that the temporary guardianship process has built into it. Doctors, being exceptionally busy these days, are not necessarily going to be able to select the right person, nor are they equipped with the capacity to do these reviews and the kind of suitability reviews that you were talking about review officers doing and all that kind of stuff. If it's an issue, particularly, for instance, like the one the deputy chair mentioned, where the care decision is: "Does the person get put into a home somewhere?" then the decision lasts for a long time, and it's being made by someone whose authority has not been actually considered by a court with all those criteria. I mean, I'm a little concerned. Maybe I don't have a full understanding of the mechanism, but the way it's described right now, it strikes me as one that has the ability to not end well.

Ms Doyle: I think that for the provinces who've had this legislation for, you know, 15 years, they have a lot of experience with how it's being used. I don't want to step into the cross-jurisdictional issues, but typically it's around short-term, time-sensitive decisions. If a person is demonstrating that they've lost capacity, what the family is doing is then going for guardianship. The intent is that it is around one-time decisions or a limited period of time, but not that it's forever, and that's why in the legislation it talks about temporary admission. "Temporary" will be a defined term in regulation, so it doesn't mean forever. If anyone feels that someone is using the specific decision-making too much or for too long, then they can trigger a review to the court or they can take a guardianship application.

Ms Notley: I guess my concern is that without a built-in time limit if that adult doesn't have somebody there who's taken on the self-appointed role of oversight person, there wouldn't necessarily be someone there to trigger that review if there is not built into the act a review that needs to be triggered by a certain time period. That's my concern. I understand what the intent is, but we all know that out in the real world people don't typically engage in, you know, long analysis of the legislation to get at the intent; whereas, if the rules are clear that at a certain point this must go for a temporary guardianship order, then I'd be a bit more comfortable with it.

I want to just go back to the other two, the permanent guardianship order and the temporary guardianship order. I noted in the stakeholder review that there was a lot of talk about the issue of oversight and the issue of monitoring the guardians and the issue of the regularity of the review of the guardianship. Is there another place in your presentation where you're going to talk about that issue?

Ms Doyle: On the court process. I was going to touch on it then.

Ms Notley: Okay. Then I'll wait for that. Great.

The Chair: Thank you.

I have a couple of questions, if I could.

Ms Doyle: Go ahead.

The Chair: My questions concern how these provisions that you've just gone over would affect a person suffering from mental illness. It may just be a question of sort of walking through a case example for us. Someone, for example, who suffered from a chronic mental illness such as schizophrenia may be determined to not be capable of making a specific decision or may require emergency treatment under any variety of circumstances.

2:00

I guess I have two concerns. One is: what provisions are there in this bill to ensure that the most restrictive option, which I would suggest is permanent guardianship, is not sought on behalf of an individual at the expense of a less restrictive option that might be available under another statute? For example, under the Mental Health Amendment Act of last year we now have provision for community treatment orders. What safeguards are there, first of all, to make sure that in the circumstances the least restrictive option is sought on behalf of the individual in question?

Then, secondly, how do we ensure in the emergency situation that you talked about that we have the ability to check to see that the patient is not under the care of a more appropriate, you know, better qualified professional to make the judgment, such as a psychiatrist in the case of someone, say, with a chronic mental illness, so that we don't get into a situation, without all the information being available, to say that the physician in charge of the case in the emergency room – that we're not making decisions outside the context of other care that the individual might be receiving or other sorts of supports or other information that may provide a better decision on behalf of that individual? Sorry. I think the question, perhaps, sounds a little rambling because it's complex and the overlap is not clear, at least to me.

Ms Doyle: I think it's a very good question. When the legislation was written, it was very much that there is other legislation that applies to decision-making, particularly the Mental Health Act and some of the changes under the community treatment orders. Where we have it, we try to have it clear and have it compatible so that there won't be confusion on the front line about which legislation had paramountcy. We did build in to the specific decision-making to allow that for certain types of decisions you would go to another. So we said that we could regulate that to make it clearer.

The registry is another section where if a health care provider needs to know if there is a formal person who is already appointed, they would be able to call the office of the public guardian to find out: is there is a guardian, and should they be making the decision? If a person is coming in and they need a psychiatrist, I think that what probably happens in emergency is that the physicians would go to their colleagues to see who's the most appropriate person.

The specific decision-making and all the different types of guardianship. Guardianship, I would say, is the most intrusive and the most formal of all of the supports because the person has been assessed, his capacity, and it's more permanent. As part of the guardianship application the court has to consider: what are the other less intrusive tools that could be used? In that would be whether or not, you know, the supported authorization could be done under the Mental Health Act. There are a number of remedies. But before the courts designate a guardian, they are going to be looking to see what other remedies are better than appointing a guardian because of the permanency. You're appointing a substitute on a long-term basis.

I'm not sure if I've fully answered your question. Maybe my colleagues from Health can assist.

The Chair: If other members would indulge me just a little further, just a supplementary, then. I understand that there's court protection, court purview, in the case of guardianship. In the specific decision instance and the emergency provision instance that you just discussed, the decisions made in those circumstances on behalf of someone are outside the purview of the court. I guess the question is: what safeguards are there going to be that (a) all of the decision that's relevant to the individual is made available to the physician or whoever else is exercising the option under these provisions?

Secondly, in the case of another professional disagreeing, perhaps a psychiatrist who the physician was not aware had been treating the patient for 10 or 15 years, what remedies are then available if other information comes into play after the fact that might suggest the decision that was made was perhaps not the best one in those circumstances?

Ms Doyle: The court does have a role in specific decision-making. Anyone can bring a court application or a review for both the decision of a person who is selected as well as the capacity of the person. Any interested person who wants to step up to the plate can trigger a court review, so the court has an overriding role.

The situation of a psychiatrist coming back and disputing the decision of the doctor who made the decision under emergency: I think that is the situation that we're living with now and have lived with for the last 30 years under the Dependent Adults Act because those decisions have always worked together. I think what's different now is the new specific decision-making person in the middle, whether or not someone is going to the family to make the decision. So I think we need to kind of look at that and analyze how all those pieces build together. We've tried to have the legislation be compatible with other legislation, but some of it is going to be a practice to see how it works out in real-life situations.

The Chair: Thank you very much.

Dr. Sherman: Well, having faced this situation many times, I think it's important to have that ability. There are lots of places where two

physicians aren't available, but I will say that for the sake of the patient's protection there should be a timeline. It needs to be tightened simply because many physicians don't practise the same way, and with an alternate health care provider the patient will only have one advocate, really, unless it's two independent physicians.

It's not only to save life; sometimes decisions are made not to save life, and that's a very permanent decision. With that type of decision I feel that there's nothing in here that will protect the patient from that. It's a lot of power in the hands of very few with that type of decision. I think you need to look at that and have a special circumstance because that's a permanent decision. And that's coming from a physician who makes these decisions. Simply, with the variability in how physicians practise and how decisions are made, for the sake of the patients' safety in lifesaving decisions we need that ability to make that. Then there are, as I mentioned, decisions where you decide to withdraw care. I don't know if that's addressed in here.

Ms Doyle: A health care decision does include palliative care decisions. So that is part of a health care decision. We have defined in our definition: a decision is to provide or not to make a decision.

Dr. Sherman: There are times when we'll have a patient we will treat. We will have a two-doctor consent. The same patient with one consultant: they'll offer them further care in ICU. There are other physicians who will not offer that, and the results will be completely different. I think you need a process here for the patient's protection when that happens.

Ms Doyle: Okay. Thank you.

The Chair: Thank you. Any other questions on this section?

I should have said earlier – I'm sorry – that if any of the other officials wanted to comment, to please just indicate on any matter as we go along.

I'd like to suggest that because we're at an hour that we take a short break and then come back. We have two sections to complete. Then, as I promised, we'll go into sort of a last go-around for questions with our officials. I suggest we recess for 10 minutes. That would be adequate?

Thank you.

[The committee adjourned from 2:10 p.m. until 2:21 p.m.]

The Chair: We'll call the committee back to order. Thank you very much. I'll just do a quick check here. Do we have our members on the phone? Dr. Swann.

Dr. Swann: Yes. Thanks.

The Chair: Kyle Fawcett.

Mr. Fawcett: Yeah.

The Chair: And Jonathan Denis.

Mr. Denis: Ten-four.

The Chair: Okay. Thank you very much.

We're keeping pretty much on schedule here. I thank everyone for their co-operation. I believe we have two sections left to do in the technical briefing. I'll turn it back over to Ms Doyle.

Ms Doyle: And I will turn it over to my colleagues.

The Chair: Okay. Very good.

Ms Bentz: Thanks, Brenda Lee. Rick Bowes and I are here to provide you with information and answer questions about how Bill 24 addresses substitute decision-making in terms of financial matters. In the material that you have been provided, there's a document that's called Bill 24 – Adult Guardianship and Trusteeship Act: Financial Matters (Trusteeship). That is really for you for a reference document. If you want to look at it sometime into the future, that would be great. Hopefully, we'll have touched base on most of the trusteeship issues in that document.

The material that Rick will be presenting to you in terms of trusteeship material today is contained in that reference document. So without anything further I'll turn it over to Rick to do the presentation.

Mr. Bowes: Thank you. My task is to speak briefly about how the AGTA, Bill 24, addresses trusteeship or decision-making, substitute decision-making, in financial matters. For the most part I'm going to not discuss issues that sort of overlap for trusteeship and guardianship where they basically have the same approach because I think that Brenda Lee will be covering most of those matters.

One thing I do want to clarify, referring to row 39 of the comparison document, is that access to financial information for the purpose of private trusteeship application would require a court order under the AGTA section 102, which allows the court to grant access to financial information if required for the purposes of a capacity assessment. I just wanted to clarify that aspect.

My comments are going to focus on issues where there are significant differences between the DAA's approach to trusteeship and the AGTA's approach to trusteeship.

As a preliminary matter I should mention that there are avenues for substitute decision-making in financial matters outside the DAA and outside the AGTA. Someone who currently has legal capacity to make financial decisions but recognizes this might not always be the case may make an enduring power of attorney under the Powers of Attorney Act, and that is similar to a personal directive under the Personal Directives Act except that it applies in financial matters. Also, certain statutes, such as the AISH Act, provide informal mechanisms for the appointment of someone to administer statutory benefits on behalf of a person who is unable to do so for themself. That is sort of outside the context of the AGTA and the DAA, but it's something to keep in mind in terms of they provide the complete package of decision-making options that are available in the financial area.

One of the changes that I would like to mention is an omission, really. Long before the DAA was enacted, legislation provided an extrajudicial, a nonjudicial, mechanism by which the Public Trustee could be authorized to administer the financial affairs of someone who was a resident in a mental health facility and incapable of managing their own financial affairs. This mechanism was incorporated into the DAA, the Dependent Adults Act, when it was first enacted in the 1970s. It's called the certificate of incapacity, and it works roughly as follows. Two physicians who have examined a patient who is resident in a prescribed facility such as Alberta Hospital Edmonton or Michener Centre in Red Deer may issue a certificate of incapacity if they conclude the person is unable to make reasonable judgments in financial matters or, as the act says, in matters relating to their estate. Once the certificate is issued and the Public Trustee is notified, the Public Trustee automatically becomes the person's trustee and the act, the DAA, provides

procedures for the certificate of incapacity to be reviewed by an appeal panel after it has been issued.

The Public Trustee is currently a trustee under about 1,700 certificates of incapacity. The AGTA would not carry forward the certificate of incapacity mechanism. Certificates already issued would remain in place under transitional provisions that would be placed in the Public Trustee Act, and the transitional provision in the AGTA, or Bill 24, is section 149(g).

The decision not to provide for certificates of incapacity to be issued under the AGTA reflects considerations such as that the mechanism is inconsistent with the policy of the Public Trustee, like the public guardian being available as a backstop trustee. Where there is no suitable family member or other individual willing and able to act as trustee, the certificate mechanism automatically makes the Public Trustee the trustee. Also, the certificate of incapacity mechanism does not promote consideration of whether less intrusive mechanisms such as informal trusteeship would adequately protect the vulnerable adult's financial interests. It also lacks upfront procedural safeguards prior to the issuance of a certificate of incapacity. There are no due process requirements until after the certificate is issued. Finally and importantly, trusteeship requirements for residents of mental health facilities may be addressed by the same court-based process that applies for other Albertans.

This last point leads me into another change from the DAA. The DAA requires the Public Trustee to take action, which I'll describe in a moment, if of the opinion that a person needs a trustee and no one else is willing, able, and suitable to be trustee or to make an application for the appointment of a trustee. In theory the Public Trustee could either apply to the court to appoint someone else as trustee for that adult or could apply to the court to be appointed as trustee. In fact, in practice it's the latter that happens. The Public Trustee in those circumstances will apply to be appointed as the trustee.

The AGTA, section 7, is similar but it goes somewhat further. The existing section talks of the Public Trustee being of the opinion that someone is in need of a trustee, but it doesn't say anything about what the Public Trustee must do in order to put itself in a position in order to be able to make that assessment. So what the new act does is it imposes a duty on the Public Trustee to make inquiries into any written allegation that an adult is in need of a trustee. Having inquired into the allegation, the Public Trustee will then be under a duty to make an application to be appointed trustee. This could be an application to the court if of the opinion that the criteria for appointment of a trustee are satisfied as set out in the act, the adult is likely to suffer serious financial injury or harm if a trustee is not appointed within a reasonable time, and also that no one else is likely to apply, such as a family member, within a reasonable time for the appointment of a trustee.

That mechanism whereby the Public Trustee is under this duty to inquire could be used as a partial substitute for the certificate of incapacity. Where the physicians could now issue the certificate of incapacity, under the new act they could bring this matter to the attention of the Public Trustee, who would then be under this duty to make inquiries into the situation and take appropriate action.

2:30

So far my comments have related specifically to the Public Trustee's role as a trustee. I'm now going to turn to matters of more general application to private trustees as well. Under both the DAA and the AGTA, section 49, a trustee may be a private individual, a private-sector trust corporation, or the Public Trustee. There are currently about 3,000 private trusteeships, which would include individuals as well as trust corporations although the vast majority would be private individuals. The Public Trustee is the trustee under about 1,300 court-ordered trusteeships.

Under the DAA the court must be satisfied that an individual proposed as trustee is over the age of 18, will act in the adult's best interest, will not be in a position where their interest will conflict with the dependent adult's interest, and is a resident of Alberta. A significant change is that under the new act nonresident individuals would be eligible to be appointed as trustee. The potential difficulty of exercising effective oversight and control over a nonresident trustee is a matter that the court could consider in evaluating the suitability of a particular individual. Also, a nonresident trustee under the bill would be required to provide a bond or other form of security unless the court dispenses with this requirement. That is similar to the approach that is taken in Ontario's legislation.

Now, another point regarding bonds and security. The DAA currently is silent about security and bonds. In addition to dealing specifically with nonresident trustees, the AGTA makes it clear that the court may require a bond or other form of security in a case. Outside of the context of the nonresident trustee it wouldn't create a presumption that a bond must be required.

Another difference between the eligibility requirements of the DAA and the AGTA relates to the matter of conflict of interest. The AGTA, unlike the DAA, does not say that an individual is ineligible to be trustee if they will be in a position of conflict. Instead the AGTA section 49(2) says that evidence of a potential conflict of interest is something that the court may take into account in assessing whether the proposed trustee is going to act in the adult's best interest. Both the DAA and the AGTA say that a potential trustee is not considered to be in a position of conflict of interest by reason only of being related to the adult or being a potential beneficiary under their will. Under Bill 24 that would be section 49(3).

I turn now to the issue of the trustee's authority once appointed. Generally speaking, the DAA sets out a list of specific powers that private trustees have by default; that is, without having to be expressly mentioned in a trusteeship order. It then sets out a list of additional powers the court may confer on a trustee. The last of these potential additional powers is to "do any other thing approved by the Court." So the DAA trustee's powers could in theory be very broad. The Public Trustee Act, which applies when the Public Trustee is the trustee, gives the same power to deal with the dependent adult's property as the dependent adult would have if they had full capacity, so under the current regime the Public Trustee would have considerably broader powers by default than would a private trustee.

AGTA section 55(1) would give private trustees the authority to do anything in relation to financial matters of the adult that the adult could do if capable, subject to specific restrictions in the act, the regulations, or the order. There is a specific restriction in the act, which is in section 55(2), and it would require private trustees to obtain specific court approval to sell, purchase, or encumber real property, land. Section 84(2) of the AGTA clarifies that a guardian or trustee – and this would include the Public Trustee – has no authority to make a will for a dependent adult. That would be similar to other jurisdictions which take this same approach as the AGTA of giving trustees broad powers and then sort of restricting them.

The essential difference between the DAA and the AGTA regarding private trustees' authority is that the DAA gives fairly narrow default powers and then allows the court to expand them whereas the AGTA gives broader powers and then allows the court to restrict them. The purpose of the change is really to reduce the

potential for financial matters that might require a decision by a trustee to fall between the cracks of an order.

With respect to investment, which is still under the heading of the authority of the trustees, under the DAA a private trustee may only invest funds of a dependent adult in classes of securities identified by regulation unless the trusteeship order gives broader investment powers. This so-called legal list approach reflects the default rule that formerly applied to all trustees under the Trustee Act. However, in 2001 the Trustee Act replaced the legal list approach with what is known as the prudent investor standard.

The prudent investor approach reflects modern thinking about managing risk in investments. Rather than attempting to identify inherently safe or risky investments in the abstract, the prudent investor standard emphasizes the importance of developing and applying an investment plan that responds to the particular circumstances of the trust. It emphasizes the role of diversification between and within asset classes in constructing an investment portfolio that strikes an appropriate balance between expected return and risk. AGTA section 59 would adopt the prudent investor standard for private trustees by referring to the relevant provisions in the Trustee Act.

The application of the prudent investor standard would be subject to a contrary intention expressed in the trusteeship order or the trusteeship plan approved by the court. For example, if the trusteeship plan stated that the trustee was going to place all of the represented adult's investable funds in GICs and the plan was approved by the court, this would trump the normal operation of the prudent investor rule, which might otherwise allow for investment in equities and so on. The Public Trustee Act, when the Public Trustee is acting as trustee, provides specific rules for investment of clients' money by the Public Trustee.

My next subtopic is gifts. Under the DAA specific court approval is required for any gift by a private trustee, whereas the Public Trustee Act gives the Public Trustee some discretion to make gifts to charities or to the dependent adult's friends or relatives in specified circumstances. Bill 24, the AGTA, would give private trustees limited discretion to make gifts without specific court authority. This is based on Ontario as well as new B.C. legislation. A gift would have to be out of property not required for the support of the represented adult or the represented adult's dependents. The trustee would need to have reasonable grounds to believe, based on the actions of the adult while capable, that the latter would have made the gift if capable. Regulations could impose other restrictions such as annual limits on the total amount of gifts, and the trusteeship order could impose additional restrictions or could allow gifts that don't fall within the four corners of the section.

Another change is actually probably better described as making explicit something that isn't explicitly dealt with in the DAA. Trusteeship orders under the DAA sometimes authorize the trustee to permit the dependent adult to operate a small bank account although the DAA does not specifically authorize this. The AGTA section 54(5) expressly empowers the court to authorize a trustee to permit the represented adult to open or maintain a deposit account in a bank or Treasury Branch or credit union subject to any restrictions the court might specify. AGTA section 58 says a trustee is not liable to account for or see to the application of any funds deposited into this account.

The purpose of this would be to allow the dependent adult to have a small amount of money in an account that they might use in an appropriate circumstance in order to purchase necessities or things like that. There's a specific duty, which, again, probably just reinforces a common law duty, for the trustee to keep the property of the adult separate from their own property.

2:40

Dr. Swann: Would you repeat that, please?

Mr. Bowes: Section 62 of the AGTA states that unless specifically permitted to do so, a trustee must keep the represented adult's property separate from the trustee's own property.

Dr. Swann: Thank you.

Mr. Bowes: You're welcome.

Turning now to accounting requirements, the current act, the DAA, requires trustees to file an initial inventory of assets and liabilities at or shortly after their appointment, and by default the DAA requires private trustees to pass their accounts before the court at least once every two years. This default requirement can be relaxed by the court to some degree although the provisions in the DAA that allow the court to do so are not entirely clear as to what they do or do not allow or require.

Passing of accounts consists of an application in which the court examines and, if appropriate, approves the accounts. The DAA does not provide for applications for the passing of accounts to be handled by the desktop process, that I believe that Brenda Lee will be mentioning in her forthcoming comments. An application to approve accounts must be made to a judge at a hearing. The DAA also allows an interested person to apply to the court at any time for an order requiring a trustee to pass their accounts.

During consultation the DAA's accounting requirements attracted much adverse comment focusing on their complexity and cost. Under AGTA section 63 trustees would be required to "maintain accounts in accordance with the regulations," and it's hoped through the regulations to provide guidance as to the form in which accounts would be kept. Trustees would be required to submit their accounts for examination and approval only if required to do so by the court. When making a trusteeship order, the court could require the trustee to submit their accounts for examination and approval within a specified period, which would be similar to what exists under the DAA, where you've got this default two-year period. Whether or not the court imposed such a requirement, any interested person could ask the court to require the trustee to submit their accounts for examination and approval at any time.

The procedure for dealing with applications to examine and approve trustees' accounts will be dealt with by regulation. It is contemplated that the regulations will permit routine applications for the examination and approval of a trustee's accounts to be dealt with by the desktop process, which doesn't require an actual hearing before the court.

Dr. Swann: Sorry. Could I ask a quick question about that?

Mr. Bowes: Sure. Go ahead.

Dr. Swann: I'm not clear from what you've said so far about whether this is a mandatory process or an optional process.

Mr. Bowes: The accounting requirements?

Dr. Swann: Is it only after a court order that it becomes a mandatory process, or is it a routine condition of trusteeship?

Mr. Bowes: Under the AGTA, Bill 24, the court at the time of granting a trusteeship order could say, for example, "Okay, you have to come back and have your accounts examined and approved," or,

as the current wording, "have your accounts passed within two years or four years." Currently the DAA says by default that you have to come back within two years unless the court extends that period. The AGTA would say that you have to come back if and when the court tells you to come back to have your accounts approved.

Another possibility would be that the court hasn't imposed that requirement or that it has said you have to come back in four years, and six months after you're appointed, someone – an interested person, a family member – thinks that something is amiss. They could apply to the court to require you to come in and have your accounts examined and approved. Does that answer the question?

Dr. Swann: Yes, it does. In the case of codecision-making, which I presume is different from a court-ordered or court-ratified trusteeship, would the conditions apply at all in terms of reporting?

Mr. Bowes: The codecision-making concept under the AGTA would not apply in the case of financial decision-making. It's limited to the decisions in personal matters, health matters. So the whole concept of the codecision-making order wouldn't be applicable to financial matters. It would be trusteeship only.

Dr. Swann: Well, that's interesting. I've had some personal experience whereby I raised the question of codecision-making often being a power imbalance for the senior. While technically it is a shared decision, it very easily becomes one-sided decision-making. I guess I'm just raising the question of whether there should be a requirement to have some kind of reporting to keep a check on the potential for abuse in that kind of a relationship as well.

Mr. Bowes: The act doesn't authorize codecision-making in the financial area. I'm guessing that you're talking about informal decision-making that's been made without any sort of formal authority.

Dr. Swann: That's right.

Mr. Bowes: Yeah. The AGTA doesn't deal with that specifically. One thing that could happen is that if someone sees such a situation where someone is looting their aged parent's bank account or something like that and thinks that the adult in question lacks capacity and needs a trustee, there's this mechanism that I mentioned earlier where someone can provide a written allegation to the Public Trustee saying: "Look. This person needs a trustee because they're being ripped off." The Public Trustee in that circumstance would then be required to look into the allegation, and if it appeared that, yes, indeed, this person does need a trustee, the Public Trustee would then apply to be appointed trustee. That is the remedy provided in the AGTA for that sort of situation, but it doesn't provide a sort of generalized mechanism for trying to keep people from being ripped off by someone who is in a position to exercise undue influence or something like that.

The Chair: Thank you.

Dr. Swann, I think we'll just allow Mr. Bowes to complete this section of the presentation, and then I'll come back for another go-round if there are any further questions.

Mr. Bowes: Okay. The last couple of things. Trustee compensation. Under the DAA private trustees are entitled to compensation out of the dependent adult's property as authorized by the court. The court must determine a trustee's compensation on a case-by-case basis without legislative guidance. Trustees cannot take compensation until authorized to do so by the court.

The AGTA, section 66, will allow private trustees to elect to be compensated in accordance with a fee schedule prescribed by regulation. This is an approach that Ontario takes. They have a fee schedule prescribed by regulation, which I'm sure will be looked at quite closely when designing the Alberta regulation. Private trustees who had elected to take compensation in accordance with this fee schedule could still not take it until it was approved by the court. It would be in accordance with the schedule, but they would still need to have it approved by the court. Trustees who do not elect to be compensated under the prescribed schedule could still take the old route of applying to the court to have their compensation determined by the court on a case-by-case basis. Under both the DAA and the AGTA the Public Trustee is entitled to be compensated in accordance with the Public Trustee Act, which authorizes the Public Trustee to charge reasonable fees, which are subject to review by the court.

2:50

One final point that I'll make relates to section 71 of the AGTA, Bill 24, Determination of Incapacity without Appointment of Trustee. It also relates to row 46 of the comparison document. I should apologize. That requires a clarification because the part in the second column there doesn't quite relate to the point that I'm about to make. The DAA assumes that a court will make a determination that an adult lacks capacity on an application to appoint a trustee. So you don't ask the court to make a determination of incapacity unless you're applying to appoint a trustee.

Section 71 of the AGTA allows for an application to determine whether a person has capacity in financial matters without the appointment of a trustee if the determination is required for the purposes of a provincial enactment or a law of Canada identified by regulation. It is contemplated that the regulation will identify the federal Indian Act for this purpose. Under that act the federal minister has exclusive jurisdiction over the property of "mentally incompetent Indians" who reside on a reserve. But the Indian Act does not provide a mechanism for making a determination of incapacity. Instead, it relies on proceedings under provincial legislation to determine that a person is mentally incompetent. So if a determination of incapacity was made under the AGTA with respect to a person to whom the Indian Act applies, the federal minister would automatically have jurisdiction to administer their property. I don't think this would come up much, but I thought I'd mention it because when you just look at the section, it's not painfully obvious what it's talking about.

That concludes my presentation on the trusteeship aspect.

The Chair: Thank you very much, Mr. Bowes.

Questions from members on this section of the briefing?

Mr. Olson: Well, first of all, I just want to congratulate you on the great work there. I think a lot of gaps have been filled in by what you've done, but I still have a few kind of nervous areas, and I imagine the devil is in the details on some of this stuff.

I know that the bill refers to plans, people having come up with a plan. I think I mentioned in an earlier meeting that that does make me nervous because in a lot of situations you have elderly spouses. One eventually crosses the line, dementia of some kind or an illness, and the other one is already vulnerable because they've lost their partner, at least the support of their partner. Now they're supposed to start coming up with plans. The paperwork part of it makes me nervous.

The other thing is that in a lot of those situations those people for their whole lives have had all of their assets in their joint names, and

it's part of their estate plan. When one of them passes on, then the other one as seamlessly as is possible is going to receive those assets. But now we're saying here in section 62 that if you are appointed as a trustee, there seems to be a pretty strong message that you have to separate those assets. I actually have seen that happen where people are married for 50, 60 years, and the husband is now in a home and the wife is told: you've got to get the house that's in your joint names out of your joint names. If you sell your house, you've got to separate the money, keep a separate account for the husband. You know, that's devastating for a spouse to have to go through. So I'm a little bit concerned about this kind of automatic bias in that direction. It feels like a bit of a sledgehammer. I'm wondering if there's some possibility of recognizing the rights of people who are in this position.

Section 49(3), that you referred to, says that there's no presumed conflict of interest just because you're a relative or just because you're a beneficiary. I would also like it to say: just because you're a joint owner of an asset, such as the family home or other investments. I'm kind of raising the question. I don't have the answer or the wording, but I think it would be much appreciated by a lot of people if there was some sensitivity to that.

Also, on the question of bonding for nonresident trustees – and I think I mentioned this in an earlier meeting as well – my fear is that judges are going to be very conservative on that. Yes, they have the power to dispense with the bond, but in most cases they probably won't. They'll just take the easy way and say: "No. It says bond, so I'm going to require the bond." Again, in these days when you have family maybe living a little farther afield but still, you know, very accessible in terms of doing banking and that kind of thing, the bonding requirement could be a real impediment. I don't know if there would be maybe some way of coming up with some criteria to send a judge a message that it is okay to dispense with the bond.

The other thing I wonder about is in terms of being a little bit more innovative. We've talked to other jurisdictions and so on, and we've heard what they're doing. In a lot of cases, you know, we could probably catch a lot of the people if they're just, say, in western Canada. I wonder about reciprocal enforcement types of legislation, for example, in Saskatchewan and B.C., where we could talk to and they could recognize some sort of enforcement orders where a trustee has been found to have absconded with money or something like that. Again, just to give us a little bit of a safety net so that we can deal with the bad apples and not be penalizing the vast majority of people who would not be mishandling money and that just because they're a province away are having to go through all kinds of bonding, which is costly, all kinds of red tape, and will discourage people from wanting to be a trustee.

Those are my comments. Thank you.

The Chair: Would you care to reply to any of those points?

Mr. Bowes: Yeah. Well, just to proceed in the same order, the trusteeship plans: point taken. You don't want to make it too complex, and certainly the intention isn't that they have to have a 50-page document. Most jurisdictions nowadays do require a trusteeship plan. In Ontario, for example, the trusteeship plan, for those of you who might be familiar with the trusteeship needs report which exists in Alberta, where you have to list the assets, is kind of similar to that except that in addition to saying what they have now, you just have to indicate what you plan to do with it. It's not a really elaborate document where you'd have to say: well, tomorrow I'm going to go down to the bank. It's more general. What we have in mind is something that would be fairly general just so that they, you know, have to sort of give some thought to what they're going to do with the adult's property once they're appointed.

In terms of the joint assets and the point about keeping the property separate: again, in the trusteeship plan, for example, one of the things we contemplated is that the trusteeship plan could indicate that we've got all of this joint property, so we're not going to put his dishes on my side and my dishes on another side. So you could deal with that in the trusteeship plan and the court order in terms of specifically permitting property not to be kept separate. I certainly take the point that you don't want to be sort of forcing people to do ridiculous things, and perhaps the wording of that is something that could warrant a second look.

3:00

Mr. Olson: Sorry to interrupt you. Just on that point, the first line of section 62 says, "Except as otherwise specifically provided by an enactment, a trusteeship order or a trusteeship plan approved by the Court," shall keep the property separate. So what would be the enactment that would be envisioned?

Mr. Bowes: For example, the trust company's legislation allows them to put money in a common fund. Now, that's not going to be . . .

Mr. Olson: That doesn't fit.

Mr. Bowes: Yeah. In terms of a private trustee it would be more: except as provided by the order. The order or the trusteeship plan could allow for property to be comingled. Again, though, you might first of all say: well, if it's joint property, should you have to actually specifically deal with it as opposed to having an exception for jointly held property? That's perhaps something that should or could be . . .

Mr. Olson: Okay. Well, again the argument being that if somebody went to the trouble of putting together an estate plan to cut down on probate costs and so on, we shouldn't be forcing them to undo that.

The other common place you see that is: the first spouse dies; the second spouse all of a sudden comes face to face with the fact that they might be next, and they now own the combined assets of the two of them, so they want to be a little bit proactive and start maybe putting the house in the joint names of themselves and the kids or something like that. All of that would have to be undone, it would seem to me, based on the current wording of this section. It even says, though, that the "trusteeship plan approved by the Court" shall keep the property separate. Am I right in interpreting that?

Mr. Bowes: I think the wording is intended to mean that unless the trusteeship plan otherwise provides, they must keep. Hopefully, it reads that way.

Mr. Olson: The way I'm reading it, unless I've got it wrong is, "Except as otherwise specifically provided by an enactment," – and that's the thing that you were referring to – "a trusteeship order or a trusteeship plan approved by the Court, a trustee shall," and then it says: keep the property separate, and so on. I don't see any qualification there.

Mr. Bowes: Oh, okay. Yeah.

Mr. Olson: You can correct me if I'm missing something here, which is quite possible, but that's the way I'm reading it, anyway.

Ms Bentz: The intention was that if it was specified in the trustee-

ship plan or the court order or an enactment, it would be okay to keep it jointly. That was the intention. Whether or not it's as clear as it should be is a good point.

Mr. Bowes: I mean, that definitely sounds like one that might merit a little bit of further consideration.

Mr. Olson: Thank you.

Mr. Bowes: And I take the point, again, about joint trustees and their relationship to conflict of interest.

The fourth one related to the issue of bonds and security. That's always a tough one. You know, a bond is great if you've got one, but they're hard to get, they're expensive, and they can deter people. Even for the out-of-province trustee there are arguments on each side. So I think that all I should probably say at this time is that it's certainly something that could warrant a second look.

Mr. Olson: One last point on that. I was interested to see that the Powers of Attorney Act does not require the attorney who's looking after the money to be an Alberta resident. I guess the rationale is: if you want to appoint somebody who lives in Australia and you trust them, well, that's your risk. But, you know, you could maybe argue that there's something of a precedent, then, that our Legislature has said that it's okay for those people not to be bonded, but we seem to be holding people who are appointed by the court to a higher standard, and they have to be bonded.

The Chair: If I could just interject, then. I'm just trying to be conscious of the time here. We have another section to go through. What I'll just remind the committee members is that this will not be our only opportunity – right? – to delve in detail into what for lack of a better term I'll call focus areas that we choose to highlight in our report. With that said, I just want to assure you that, you know, department officials will be here on a regular basis from Seniors and Community Supports and Justice and Attorney General to allow for a more in-depth discussion of the particular areas that we choose to highlight.

With that, I'll recognize Ms Notley, and then I think we'll move on to the final section.

Ms Notley: That's all right. I'll pass.

The Chair: It's been covered? Okay.

Well, in that case, then, are there any other questions on this section? The deputy chair.

Ms Pastoor: Yeah. I'm sorry, Mr. Chair; certainly, I'll keep the time in mind.

I just wanted to perhaps get it on the record, to have it as perhaps a focus area. If I've understood this correctly, I think that I'm uncomfortable with the change from the DAA to Bill 24 in terms of the audit requirements. I really believe that audits when someone is looking after someone else's money are a good idea because if something is wrong, you will never recover that money, and it can go for a long, long time before you discover that it's long gone. I just wanted on the record that I'd like that particular time frame looked at.

Thank you.

The Chair: Okay. Thank you.

If nothing further, then we'll move on to the final section. What we just covered were slides 27 to 30, so we'll begin now on slide 31.

Ms Doyle: Thank you, Mr. Chair. I'll be sensitive to the time; I'll probably move through fairly quickly.

Slide 31 is around the capacity assessment model. What you'll note in Bill 24 that's different in the Dependent Adults Act is that we're looking at regulating who would be able to assess capacity and that to be a broader group of people. Under the Dependent Adults Act it's physicians and psychologists. What we would be looking at in the adult guardianship act is to include nurses, occupational therapists, social workers, and registered psychiatric nurses, so a broader group. That was to respond to the need in rural areas to have someone who is available to assess capacity. Part of that process would be having a standardized model in the regulations around what a person is to assess, the training requirements, the certification as well as the fees. So that's all built into the regulations.

Why that's important, slide 32, is that we heard from the public that they want greater clarity around what is capacity to ensure that it lines up with other pieces of legislation, such as the Personal Directives Act. We have ensured that the capacity test is the ability to understand information and appreciate the unforeseeable consequences so that it lines up and that the process be more specific to the individual.

Next I'll go to the court process. You've heard quite a bit about codecision-making, guardianship, and trustees, that it's a court process, that there's screening, the person applies, that there would be a guardianship and a trustee plan. The idea is to prescribe the forms for the guardianship and trusteeship plans to be quite simple. There will be the review by the review officer. The court would look at the matters. We've provided consistency between guardianship and trusteeship around what the court would look at.

The review process. In the Dependent Adults Act there was an automatic six-year review. What we heard from the consultation is that it needs to be more flexible based on the capacity of the person. If a capacity assessor has said that the person should be reassessed in a certain period of time, then the court must trigger a review based on that timeline. If the person said that they've had a stroke and they need to have a review in three years, then the court must trigger a three-year review. Where a capacity assessment does not specify a certain review period, then it's up to the court. We heard from parents with children with severe developmental disabilities that the automatic six-year review didn't provide a good service to them, that it was just costly.

I think I'll move on to the desktop application under the Dependent Adults Act. It could be an affidavit application where a lot of materials are provided to the court. There was the notice that was given to the adult as well as the nearest relative and directors of facilities. If there was no objection, it could be heard in chambers. The judge could look at the materials and make a decision, or there could be a court hearing if somebody objected. We've maintained the same process within the adult guardianship act.

3:10

Now I'm going to move quickly to the protective provisions in the act. The first one, and the strongest one, is the temporary protective order. That is where a person has already been declared as incapable, so that is a represented adult who has a private guardian. This is a situation where it comes to the attention of the public guardian that someone is being severely harmed and that there needs to be action right away. In that situation the public guardian, if they feel they have sufficient information, can take an application to court. The application to court could specify that the public guardian take on the role of a guardian for an interim period of 30 days, could authorize police to remove the person to a place of safety, and any

other matter that the court – we don't see this happening very often, but it is a tool that's in the act.

Why it's important is that we heard that there are very severe situations where a guardian may be keeping someone restricted. We've had situations where they've been locked in rooms and nobody can have access and the person has deteriorated quickly. So that's the reason for it.

Next, I'll move on to slide 36. Slide 36 is around the complaint process and investigation. I touched on this the last time, on June 18, so I'm just going to quickly move through it. It's the idea that anyone can make a written complaint about the actions of a codecision-maker, guardian, or trustee. It has to meet certain criteria in that they have to be not following the duties or the order and it causes harm. The harm is defined as physical or mental harm or financial loss.

There is a process where a complaint officer reviews it to ensure that it meets the criteria, their screening of vexatious and frivolous ones. If it meets the criteria, then an investigator is assigned to go out and meet the parties. It's built on a restorative model that education at the outset can get people back on side. That's the spirit of it. But where there is a founded complaint and mediation or education doesn't work, then the idea is to take it back to court.

The registry, slide 38. The registry is the intent of allowing to keep a record of all the court orders in the province around guardianship, codecision-making, and trusteeship. Right now there is an informal registry. The office of the public guardian receives copies of all orders because we are notified, but this would be much more, you know, regularly keeping track. It has a number of purposes. One is the ability to remind private guardians or private trustees or codecision-makers, if there's a review period and if they're not going back to court, that they need to go back to court. It also provides access for the health system if they want to know: does someone have a decision-maker? That's the primary purpose of the registry.

Questions?

The Chair: I expect that there will be a few.

Ms Notley.

Ms Notley: Thanks. I guess that there are a few things embedded in here which I started to raise before. I'll try to keep my questions or comments focused. Again, I was reading through some of the discussions in the stakeholder reports, and there was talk then about setting up a tribunal, for one thing, separate from the courts that could deal more responsibly with a variety of issues rather than sort of being in this position where everyone – we seem to have a system that's constructed towards trying to limit our need to go to court. I understand the value behind that, but the problem is that however onerous it may be, the court has historically fulfilled an oversight role. So a balance, then, in terms of moving away from the hyperformality and delay associated with courts might be to have a different venue.

My concern is that what I think I see here is that much of this is generated by – well, there are two things. The first concern is that a lot of this is generated by complaint, so I guess I'm taking the opposite view to my colleague over here, who practises with the majority of people who would do a wonderful job managing trusts and stuff. I'm worried about that case where there's abuse and where the person has nobody who's acting as an advocate for them. Where you have a guardian abusing their role and there is no neighbour who's going to take the time to figure out how to navigate the system to get someone to check on whether the guardian is doing the right job, then there is no mechanism for there to be any oversight of that private guardian.

Although I don't think once every six years was an appropriate mechanism for oversight, potentially removing that and then not having any other one that's necessarily built in is a concern. I'm not saying that it should be every two years or something, but I would rather see a more proactive monitoring process that did not rely simply on complaints because I'm just very concerned about those many people who – I mean, the reason they have guardians is because presumably they're not their own best advocate. Then you're relying entirely on the person that's the guardian to be doing that. That is my concern around the overarching oversight and enforcement mechanism.

I'm just curious. With the temporary protective order, that's something that is limited only to where you're removing somebody from a private guardian. I had misinterpreted that. It doesn't have to be now, but at some point I would just like clarification for myself – I think other people have it already, but I don't – on what mechanisms are in place for there to be a temporary emergent order where you're trying to protect someone from themselves, in essence, right? I think I heard some reference to the community treatment order and that kind of thing, but I wouldn't mind just having some clarity on what the other avenues are there so I can see how it links together.

I guess the final question or concern that I have is with respect to the assessment of capacity. I am somewhat concerned about the idea of adding all these other assessors to the list until we actually see what the capacity assessment tool looks like. There's far, far too much room for differences in practice and discretion and differences in training and differences in understanding the whole range of conditions which can impact capacity out there. I'm a little concerned about opening the door to new professionals without knowing the consistency of the assessment tool and knowing a bit about the background in terms of its reliability if utilized by someone without the exact training.

For example, for someone who's got developing Alzheimer's there's a different set of criteria or factors as opposed to someone who's got schizophrenia as opposed to someone who has bipolar disorder. In terms of what you've got capacity for, you're going to get into the process of defining different decision-making exercises, some of which you have capacity for and some of which you don't. My professional experience with the mental health system as a whole is that there's really nowhere near enough clarity out there, so I'm quite nervous about what that will look like. I'm not comfortable with leaving it all to regulation without having at least some idea of what's anticipated in regulation.

Those are my comments at this point.

The Chair: Thank you.

Care to respond?

Ms Doyle: Maybe I'll answer the last one because it's freshest in my mind. We did have a subcommittee on assessment of capacity for about a year and a half. That was made up of a variety of colleges, and that issue was struggled with, too, because psychologists use psychometric tests, doctors use, you know, many mental tests, occupational therapists use functional, so they all had to work together to basically come up with a model that wasn't tool specific but more an assessment process. They came up with a very good model around the test of capacity for all of the groups.

It's similar to what happens in Ontario. In Ontario they started to look at kind of a broader group, and then they made it smaller. In Manitoba and Saskatchewan it's broader, too. We wanted to start small with the professions who had it in their scope of practice

already. The idea was to train people to the model, to the test of the capacity, so those who are trained to the model are actually certified to carry it out not just based on their own professional background but based on the training of the model. There would be a process of quality assurance to make sure that they were doing it in a consistent fashion. I don't know if that provides you much comfort, but certainly the subcommittee spent a lot of time looking at it.

3:20

Ms Notley: I suppose to some extent I'd be interested in finding out the level of peer review, of study of those models, that kind of thing, because it is ever changing, ebbing and flowing, almost more of an art than a science, really.

Ms Doyle: It is.

Ms Notley: And you are potentially having such huge, huge implications for people's rights.

Ms Doyle: The comfort in Bill 24 for capacity assessment is that even though the assessment is done by different professionals, it's the court who has the ultimate decision-making around capacity. They're determining that the person is incapable and that there needs to be someone appointed. That's the comfort: that it does go to the court and the court makes the final determination.

Ms Notley: That's true, but then again, that's where I get back to my concern around the court not necessarily reviewing it on a regular basis and the lack of consistency in terms of how people will respond to these capacity assessments on any different day, let alone month, week, or year.

Ms Doyle: Yeah. We would be looking at it very closely in a re-evaluation. The part about the court's role is maintained. There was a lot of discussion when we did the stakeholder consultations back in January 2006 about a tribunal. Would a tribunal be a better model than the court model because it was seen in Australia as being more friendly to the people who it's impacted, both the adults and the families? What we found as we did more analysis of the tribunal model is it didn't really meet the needs of Alberta. What we found is that the Queen's Bench provides a lot of oversight in many ways. The difficulty was around making the initial appointment smooth and that we take away the delays and making it easier to get back in.

Ms Notley: See, to me that seems a bit odd, given all the other conversations we've had in different venues about the many, many systematic problems we are having with our court system in terms of the delays and the costs and all that kind of thing. It would seem to me that the court system wouldn't necessarily have the capacity to be as responsive as it needs to be.

Ms Doyle: We've been working with court services as a part of Alberta Justice, and we have a subcommittee who is looking at the court application process to make sure that it is smooth. Right now if there's an application for guardianship, it often takes four trips to the court. We would be looking at one and a shorter period of time. From the time that a person has the capacity assessment, it goes to a review officer. There's a notification, and then it gets into court. We're working with court services to make sure that timeline is quite smooth, as opposed to a person having to go and then finding their documents are not perfect. I think Mr. Olson had mentioned that before.

The Chair: Thank you.

We're going move on, then. The deputy chair, followed by Dr. Sherman, followed by the chair.

Ms Pastoor: Yes. Thank you. My concern also is that a lot of these things are triggered by a written complaint. I can remember when the Protection for Persons in Care Act came in. Actually, people could make just a phone call, and it could be anonymous. That did create huge problems because we did have all of these – what is it? – vexatious complaints.

An Hon. Member: Frivolous and vexatious.

Ms Pastoor: Thank you. I'm not sure where that came from. It's just like God out of the sky. Okay.

Then it was changed that they had to put it in writing, and people just don't come forward, especially older people. I just have a problem that the only way this can be triggered is through a written complaint. I'd like to see if there wouldn't be some other way that people could come forward, because I know it probably isn't going to happen as much as it should.

The other thing I don't see tied into this is if a written complaint did come forward and the person that was adjudicating it would look at it and say: yes, there has been abuse. Particularly where it will make it difficult, of course, is family basically stealing their parents' money. To me that's a criminal offence because it really is theft. I don't see a mechanism where that would be, perhaps, turned over to the police, which is, in my mind, where it should be.

Ms Doyle: There is a remedy in the act where it says that if it's a criminal matter, then the person who receives the complaint can refer it to the police.

Ms Pastoor: Thank you.

Dr. Sherman: You're talking about protecting a vulnerable population. For children we have a law: if there is suspected child abuse, you have to report it. This process is that either there will be a regular review or it's complaint based. Is there anything that says that you must report suspected elder abuse? I don't see a difference between having to report in children and this. These are people who don't have a voice, and the point has been made that many people won't verbally complain, let alone complain in writing. But if we said, "Look, if there is suspected abuse" – I don't see a difference between this and child abuse. I'm wondering if you can answer that question on that issue.

Ms Doyle: I think the difference is that an adult is seen as a person of liberty because they have charter, and this act deals with people around incapacity, so it doesn't deal with capable people who are being abused. That's more for criminal matters. For the adult protection provisions that are in this act, it's really targeted to those who have already been declared as incapable and have a substitute appointed, the guardian or the trustee or the codecision-maker.

When we were in the stakeholder consultations, we did explore around: should it be voluntary for people to identify that there is a concern, or should it be mandatory? The feedback that we received is that people wanted it much more around voluntarily bringing it to attention. That's where we landed. There is a number of people who are interested, and they could be health professionals. A lot of people have contact; it's not just that they're living isolated, alone. Often they have contact with their natural supports, the community, or their formal supports. And under lots of professional obligations if you notice that someone is being abused, then you have an

obligation to do something about it. We didn't go the route of mandatory.

Dr. Sherman: The only concern here is that there is an interest because of the finances. You're going to have a lot of seniors coming up who have a lot of money and are pretty wealthy. If it's a voluntary thing – many of these folks that show up are abandoned by the families. They're abandoned by the people who are supposed to look after them. Unless somebody complains – nobody has the courage. Not many people have the courage to really look into this. That's just an important point I thought I'd bring up.

Ms Doyle: Yeah. I appreciate that. Thank you. I don't have an easy answer for it.

The Chair: Thank you.

I just wanted to test something with you as well in the form of a question. It seems to me that throughout the act we're assuming a very high degree of integration among health care practitioners, people in the justice system, and other people who provide support services to people with mental disabilities. I guess it's maybe a better take on the question I was trying to ask earlier: how do we ensure that someone who is really in need of treatment – again, I'll use mental illness as an example – is not, you know, referred through a lengthy process for a capacity assessment when what they perhaps might more appropriately benefit from is an order under the Mental Health Act for assessment and treatment? How are we going to distinguish between issues of capacity in that sense and issues where treatment is required and without any undue delay?

Ms Doyle: I think the education process is immense, especially as there are changes to the act about different choices in decision making, for health care providers and other service providers in communities having a good education system on how each part of the continuum works together, particularly with other legislation such as the Mental Health Act.

3:30

The test of capacity is different in Bill 24 than it is in the Mental Health Act. The test in our act is more a cognitive than a functional one around: can they understand? Can they feed? Whereas in the Mental Health Act it's more around harm to self or others, and my Health colleagues can clarify that more. So I think that the more people are aware – certainly as part of the capacity assessment process, before a capacity assessor even assesses someone, they have to determine whether it's necessary and the purpose of it, and they have to explain that to the adult, so there's a bit of a screening before they even get into the process. But education, I think, is the key.

The Chair: Thank you.

Any other questions on this section? Members on the phone, any questions? Members at the table?

Mr. Vandermeer: I have questions, and I don't know how to exactly get it out. For accountability, when there's a guardian or a trustee, is there any form that says they have to be accountable to the other siblings or family members? I know that you say in here to the court, right?

Ms Doyle: That is the mechanism. The accountability is built in that they're receiving an order from the court. So the court is giving that order, and the court can remove that order if they feel that the person isn't acting appropriately. The other remedies around accountability are: are they going back when they are supposed to be, which is the review? Are they acting badly? Did somebody notice that someone's acting badly – a poor term – and that's the complaint? And having people educated.

There isn't a process for their accounting to the family. There is notification of the family, but there isn't kind of a sharing of: here's how I've taken on the role.

Mr. Vandermeer: How would you even know, then, if there was financial abuse of family members taking care of other family members?

Ms Bentz: If you suspect that there is abuse happening, you as an interested party can make an application to the court and ask that that be reviewed by the court.

Ms Doyle: Or you can make a complaint.

Mr. Vandermeer: Yeah. There again, I'm just thinking of a personal situation, that people don't typically like to complain – right? – or get into big fights with family members.

Ms Doyle: Yeah. One of the things that we heard over and over again is that this is such a sensitive area because it's relationships with people. You know, lots of things can happen that someone may misunderstand, but there also is a need for some protection for vulnerable people. It is grey. What we heard is that having to wait and take it to court was unsatisfying because people didn't do it, typically, because it's very adversarial and you have to have a lot of evidence.

The process that other provinces have looked at and what we included was that if you had a concern, it's probably an overriding concern, and you don't have to have too much evidence to make a complaint. The process is that somebody neutral, who is outside of it, who knows something about abuse, would then look at it, ask more questions, so it's not just what they write in the form. There would be a process of asking the questions. But that's the balance.

Mr. Vandermeer: Okay. Thank you.

The Chair: The deputy chair.

Ms Pastoor: Yeah. I'd like to follow up on that. I'm sure that all the MLAs sitting around the table will find themselves in the same position if they haven't already. People come to our offices with huge concerns, and they cry. As MLAs we get it at the end. What can we do? I mean, we know something's going on or at least it should be investigated. Sometimes I'll send letters forward, but you still have to have that person's permission to say that you can use the information they have given you. I know that there are lots and lots of things out there where people are terrified and nothing happens. I'll just leave that difficult situation on the table for you, Brenda.

Ms Doyle: It has been a fun day. I would say that if you're an MLA and you know of a concern that has come to your attention – you don't have to know it first-hand – you can make a complaint, and we can check into it. I think that's the difference in the future of Bill 24 than what has currently happened. Right now if you tell us, we don't have a lot of legal authority to do anything about it other than to say that the person who has the first-hand information should take it to court. So now you have a remedy.

Ms Pastoor: Thank you.

The Chair: Thank you.

I believe, Brenda Lee, that concludes the presentation.

Ms Doyle: That concludes the presentation. I just want to raise one issue. You're talking about the comparison document between the Dependent Adults Act and the adult guardianship. We just noticed that there are some further clarifications on the trustee side in that document. So one thing I would offer: we could, you know, correct that document with those additional clarifications if that's something that would be helpful.

The Chair: Okay. We'll discuss that under the next agenda item because we're going to specifically look at that document and one other. Thank you for the offer.

Ms Doyle: Okay.

The Chair: At this point, just given the time, if members are in agreement, then, we'll move from the technical briefing on to other parts of the agenda. As I've said, we'll have opportunity at future meetings to delve into these areas in much more detail.

I would like to thank all of you for the presentation today and thank the officials from the Department of Health and Wellness for joining us as well. If you wish to stay, you're certainly welcome. We will require, I think, assistance from the other two departments for a couple more items here. I'll leave it to officials from Health and Wellness as to whether or not you stay.

Mr. Chamberlain: Thank you, Mr. Chairman. Unless you have any questions, we'll probably get out of your way, I think.

The Chair: I think we're good.

Mr. Chamberlain: Thank you, Mr. Chair.

The Chair: Thank you so much for being here.

Ladies and gentlemen, we're moving on to agenda item 5, then. You'll recall that at the last meeting we had a discussion about what other research or briefing we would require in addition to the technical briefing that we agreed to have from the officials that were here today. There were specifically two things that the committee discussed and agreed would be helpful for our purposes on an ongoing basis. The first one is item 5(a) on your agenda; that's the cross-jurisdictional comparison. This along with the other material was made available on the website prior to the meeting. I'm not proposing that we go through an in-depth review of it unless there's reason to do so, but I would invite Dr. Massolin if he wants to make any comments on behalf of his team. Then we'll open it up for questions.

Dr. Massolin: Thank you, Mr. Chair. I was thinking that in the interest of time I might defer to you and the committee members. We can go right to questions if you wish. I prepared a little bit of an overview to pull out some of the highlights of this document, but basically those comments are embedded within the document. So I can forgo that if it's the wish of the committee, and we can go right to questions in the interest of time.

The Chair: Okay. Are there any specific conclusions or observations you'd like to bring to the attention of the committee before we do that?

Dr. Massolin: Well, I mean, I've got them prepared, and I can go through them if you wish.

The Chair: Okay. I think it would be helpful, so please give us that.

Dr. Massolin: Okay. Sure. Thank you. I mean, not to go over the ground that has already been covered but just a few observations that came to light in terms of preparing this document. I'm going to proceed along in the order in which the bill itself is laid out and start with supported decision-making along this continuum that Ms Doyle has indicated. I wanted to point out that this supported decision-making provision is new to Alberta, and the only other Canadian jurisdiction with similar provisions is Yukon. Unlike Yukon's legislation, Bill 24's supported decision-making provisions apply only to personal matters, and a supporter does not have access to financial information of the supported adult. And note that Yukon's provisions do not restrict the supported decision-maker to personal matters or prohibit access to financial information.

3:40

Yukon's legislation, furthermore, also allows for adults to enter into what are called representation agreements. Representation agreements are where two or more trusted friends or relatives may make a limited range of daily decisions relating to personal or financial affairs on behalf of the adult. There is no such provision in the proposed legislation for us.

Now, in terms of codecision-making, this is new to Alberta as well, as we've heard. The only other Canadian jurisdiction with similar provisions is Saskatchewan. Bill 24's codecision-making provisions apply only to personal matters, while Saskatchewan's legislation allows for personal codecision-makers and property codecision-makers. Under codecision-making in terms of the statement of objection, Mr. Chair, the Saskatchewan legislation has express provisions for the filing of a statement of objection to an application for a codecision-maker. However, Bill 24 does not contain a similar provision. This bill, Bill 24, does provide for the represented adult to give consent. That preserves the individual autonomy in this regard.

Turning to guardianship and trusteeship and specifically legal counsel, the jurisdictions of Ontario and Saskatchewan in their legislation make provision for legal counsel for the adult in the application for guardianship orders. Bill 24 does not but does create the position of the review officer, as we've heard. According to Bill 24 the review officer will prepare a written report for the court, of course, which provides for the wishes of the adult and the suitability of the proposed guardian or trustee.

In terms of capacity assessment and the capacity assessor, the former requirements of a capacity assessor are provided in the regulations in most jurisdictions. Bill 24 states that a member of a health profession may make assessments. However, everything else is left to the regulations, and we've heard a little bit about what those regulations might entail. In Saskatchewan regulations require that there be at least two assessments. Furthermore, Saskatchewan regulations allow the widest variety of professionals to perform assessments. Those health care professionals include medical practitioners such as nurses, psychiatrists, psychiatric nurses, occupational therapists, social workers, and speech pathologists. Ontario regulations require that to be qualified individuals, those individuals must complete a qualifying course, keep up with continuing education requirements, and perform a minimum number of assessments per year.

In terms of a temporary guardianship order, all jurisdictions that we studied allow for this temporary guardianship and trusteeship order. Each jurisdiction stipulates a different time limit on the temporary order. Under Bill 24, for instance, the order is initially limited to 90 days but may be extended by six months. Now, this is

an important consideration, as we've heard. This six months' extension is unique to Bill 24. Other time limitations are 90 days in Ontario, 180 days in Yukon, and six months in Saskatchewan.

Turning to trusteeship, Bill 24 and Ontario legislation require nonresidents, as we've heard, to the province to provide security for the value of the property over which they have trusteeship if they are appointed as trustees. By contrast, Saskatchewan and Yukon legislation provides that the court may require that any guardian, not just those nonresidents, provide security. Saskatchewan and Ontario legislation allow guardians of property to make any decisions that the adult would have made if capable with respect to property with the exception of making a will. Bill 24 prohibits a trustee from making a will on behalf of a represented adult and also places restrictions on a trustee's ability to sell, transfer, or encumber real property, and that is similar to Yukon legislation. Bill 24 also has specific provisions regarding the giving of gifts by a trustee on behalf of a represented adult, and that is similar to Ontario legislation.

Turning to protective measures, it bears noting that Bill 24, British Columbia, and Yukon legislation all have extensive provisions for protective measures. That's all I'll say about that issue.

In terms of specific decision-making – and I'll end here – each of the jurisdictions compared has similar provisions for health-related specific decision-making. This includes designating the nearest relative to be a specific decision-maker or designating a proxy for the purpose of making decisions relating to the treatment which the adult does not have capacity to make. But Bill 24 is unique in explicitly precluding a specific decision-maker from making decisions relating to certain issues and procedures, including psychosurgery, sterilization not medically necessary, and participation in research or experimental activities which have little or no potential benefit to the adult.

Those are some of the observations we've made.

The Chair: Thank you very much and to everyone who worked with you to prepare the document.

Any questions at this time from members? We will have the opportunity to come back to this. This is for our ongoing reference throughout our review of the bill.

Ms Notley: Can I ask one quick question?

The Chair: Certainly.

Ms Notley: I've scanned through here really quickly. Did you address the issue of the specific health decision model where the doctors are able to identify and appoint guardians and whether there are similar ones? Is that addressed in here?

Dr. Massolin: The emergency provision?

Ms Notley: Not the emergency – they're going to die tomorrow – one but the one that they need some medical treatment and we need to appoint somebody for that particular issue.

Dr. Massolin: I'll defer to Katrina on this one.

Ms Stewart: Yes. There is a section in the cross-jurisdictional analysis that covers that based on the discussion earlier this afternoon, perhaps not in the same detail as you were discussing earlier. In terms of a physician or a doctor appointing or choosing a specific decision-maker, it's very similar across the provinces. Some of the other details that were brought up – for example, choosing to save life or choosing not to save life I did quickly look up in B.C.'s legislation. There is a provision there that deals specifically with that, whereas I did not see that in Alberta's proposed legislation.

Ms Notley: Thank you.

The Chair: Okay. Thank you.

Anything further? Great.

Ladies and gentlemen, we have about 12 minutes left in our agreed meeting time. If you'll permit me, I'm going to try and move fairly quickly through the remaining items. Item 5(b) is the comparison document. This was prepared by the Department of Seniors and Community Supports in response to the committee's request at the last meeting for an analysis that showed the change from previous to the proposed legislation. In your technical briefing you made reference to this in several areas. This was posted earlier this week, and our apologies that we couldn't have it up for you a bit sooner.

Again, this is intended as something to be used for the ongoing reference of the committee. I guess I'll just start by asking: is there anything you would like to say further to this document? The intention was not to have the committee led through it line by line. It's a long document. Is there anything you'd care to highlight at this point?

Ms Doyle: No. Basically, we took a very detailed approach to all of the provisions in the act so that you would see, kind of, how they lined up. The only thing I would add is that just on some of the trusteeship we noticed that further clarification could have been provided.

3:50

Ms Notley: I just note from the minutes from the last meeting that I'd also asked that, maybe not on a clause-by-clause basis, there be some discussion of the Mental Health Act just in terms of the integration of some of the similar provisions. I don't see anything of that in here. Is there some other document where that was included?

Ms Doyle: I'm sorry. That's not what we did. If that's the pleasure of the committee, we could certainly do that.

The Chair: It was a request. If it's helpful, after the meeting we could have a brief discussion maybe about what specifically we're looking for. I think it probably has to do with where the legislation originates in government. So the issue is around overlap or potential overlap between this legislation, the Mental Health Act, and the regulations they're under, correct? Perhaps, if I could say, we need to provide a little more clarity on the request, and perhaps you'd be able to provide us with that information.

Ms Doyle: Sure. We certainly have talked to the officials, many of the people who are here today, around the issue of: is there an overlap and how does that all work? We haven't provided it in this document, but that's certainly something we could do.

The Chair: Any other comments on the comparison document?

If I could, I think you've extended an offer. There were a couple of minor clarifications that you alluded to earlier, and you've offered to, you know, give us a second edition including those clarifications you've made. In addition we'll be looking for the information on mental health legislation that was requested. What we'll do is then, once that's been provided, we'll upload that to the committee

website. Again, that'll be part of your growing list of documentation that you can refer to.

Okay. Item 6 on the agenda is the review process. We do need to spend just a little bit of time on this so that we are properly prepared for our next meeting. There were, again, some items that we asked for at the last meeting that have been prepared for us. The first, item 6(a), is a draft stakeholders list, and that was prepared by Dr. Massolin. Any comments you'd like to make on that?

Dr. Massolin: Well, yes. I could briefly go through the methodology that I used to derive this document, if that's appropriate. What we did is we first of all looked at the consultation completed by the government departments, which, we've already heard, looked specifically at the stakeholders consulted, a list of which has been presented to the committee and provided there, and also looked at the government department's proposed stakeholder list as it stands right now, in addition to doing other research to fill in potential gaps.

What we found in doing all that is that there has been, as we've all heard, extensive consultation. There is also, certainly, some overlap in terms of what is provided here in this list that we've put together and in the lists that have preceded it, but it bears noting that there are a number of stakeholders that are different on our list as compared to those other lists.

The other thing I'd like to get into really quickly, Mr. Chair, is just to talk about the organization of the list. What we've done is to divide the list into two categories: primary and secondary stakeholders. The primary stakeholders are basically those stakeholders whose interests and concerns and issues dovetail quite directly with the issues and interests that are brought up in Bill 24. The secondary stakeholders also have a stake in Bill 24 but maybe not quite as close a stake. So that was the rationale for that. Also, we just created what we thought are rational, logical categories to categorize this list. As you can see there, it's divided up into associations, societies, unions, regulatory colleges, and so forth.

Just in conclusion, while there has been considerable consultation with stakeholders in the lead-up process to drafting Bill 24, I'd like to point out that this consultation happened a little while ago, two years and beyond, and also that this consultation had to do with concepts and issues rather than with specific provisions and wordings that exist in the bill as we see it today. But, of course, Mr. Chair, it's up to the committee as to how they would like to deal with this draft stakeholders list, this proposed list, and we await the committee's decision as to how to proceed.

The Chair: Thank you. Unless there are questions, I'm going to propose that we move on.

Deputy Chair.

Ms Pastoor: Thank you. Sorry. On page 4 of the stakeholders, of course, it's all of the now defunct regional boards. I'm wondering if the new superboard might have some input into this after the fact that these don't exist anymore.

The Chair: The term, just for the record, is the Alberta Health Services Board.

I'm not sure of the question that you're asking.

Ms Pastoor: Well, just that the regional health authorities were part of the stakeholders. In view of the fact that they don't exist anymore, would the Alberta Health Services Board want to have some input into this particular bill? I mean, it may be too small, but the point is that they now represent this group that is listed on this as a stakeholder.

The Chair: Well, if I could, I will undertake to inquire as to whether there is some interest. We'll make a note of that in the minutes of the meeting.

I guess, just on this issue I have a couple of comments, Dr. Massolin. Your distinction between the stakeholders list and what they were consulted on – again, I think we've talked about this in earlier meetings. This bill has been referred to the committee after first reading. So the consultation on the concept and, you know, theoretical context for the bill and some of the processes that are involved would, if I could express my own opinion as the chair, be entirely in alignment with the nature of the bill as it has been referred to the committee. As in our review of the standing orders at the first meeting, as I think we all recognized, the reports gear toward the subject matter and the content of the bill as opposed to specific amendments. I just sort of offer that in response, not to take away from the observation that you made.

The purpose of this really, ladies and gentlemen, then, is to help us in a subsequent meeting in making a determination of what, if any, stakeholders we would like specifically to invite to appear before the committee. This information was provided in addition to the information from government officials about who they consulted in the production of these earlier reports. It's for information purposes so that the committee can make that decision. I'm going to not propose that we attempt to do that now, given that it's 4 o'clock and, you'll recall, as well, that we're going to talk in a minute about the advertisement that went out and the submissions that are coming in with a deadline of August 15. That information is also required for us to determine who we may wish to invite specifically to appear before the committee. This is one piece of all of that stuff that we're going to require in order to finalize the list.

Is that helpful? Are there any questions or clarity required? That's why we requested it. Okay.

I want to thank you again for taking the trouble to prepare the list and the commentary and the cross-reference to the earlier work by the department. It is very helpful and much appreciated.

Dr. Massolin: Thank you.

The Chair: I'd like to propose that we defer item 6(b) just in the interests of time, the Process for Receipt of Written Submissions. The key decision here is whether or not submissions would be publicly available, excluding, of course, those who may make submissions who request that they not be publicly available. Given that we don't have any submissions to review yet, I'm just going to propose that we defer that to a future meeting. Would you be in agreement?

Hon. Members: Agreed.

The Chair: The clerk has just reminded me that as we receive the submissions over the summer, they will be posted to the internal website for the committee, so you'll be able to access them securely as they come in. It's a good idea to check back frequently. You'll get an e-mail notifying you when something has been received.

4:00

Now we're at the agreed time for the meeting. There are a few other items that we were going to try to get through. I guess at this point I'd ask whether it's the wish of the committee that we continue for a few minutes beyond 4 o'clock or whether there is a motion to adjourn at this point.

Ms Notley: Well, I'm not sure if you want to touch on items 7(a)

and 7(b). I certainly have no difficulty with staying past 4. As well, I had a matter that I wanted to address under 8, so I certainly don't think that adjournment is the way to go quite yet.

The Chair: Well, I think the question is that members have various commitments and have agreed to, you know, a meeting time for the committee. The additional item under Other Business: the chair wasn't aware of that until this morning. So I'll ask if it's the wish, then, of the committee to continue.

Mr. Denis: Mr. Chair, I'm going to make the motion to adjourn.

Ms Notley: I'd like to speak to that motion, please.

The Chair: We have a motion to adjourn. Go ahead.

Ms Notley: Well, I'm very much opposed to that motion, as the chair knows. It's my intention to bring forward a motion asking that this committee engage an inquiry on the issue of, I would suggest, the emergent situation that we're experiencing with the loss of our three top public health officials here in the province. As you know, we have some serious concerns, and we don't believe that the hazards that are being created by their absence are being appropriately addressed right now, nor do we believe that we're getting the information about the circumstances around those doctors' departure.

Given that the House is not sitting and given that the mandate of this committee is to inquire quite broadly into public policy issues that are a part of its mandate, I think it's quite reasonable for us to have a discussion about this issue. That's why I wanted to bring forward the motion. It's an opportunity here for us to hear from, if he so wishes, the minister and also an opportunity for us as the committee to ask the former deputy minister and also those health officials to come and speak to the committee about why they have left.

We have had a number of independent bodies identify the significant hazards and the risks associated with their departure, and we've not been given any kind of clear indication of what processes are in place to ensure that we address the emergent nature of their departure. So this would be an opportunity between now and when the House sits again for us to have that conversation. I'm not really that interested in waiting until we have another health committee meeting, which will probably be over a month from now.

The Chair: Okay. Thank you very much. First of all, with due respect, the request was to speak to a motion to adjourn. I can't in fairness to everyone else allow you to propose a motion on another matter while that motion is under debate.

I'm going to ask for other speakers on the motion to adjourn, and then I'm going to make some comments as the chair on the other matter that you raised if the members will permit me to do that.

Mr. Dallas.

Mr. Dallas: Mr. Chair, thank you. It's clear that there are a number of items left on the agenda and that we had agreed on the time of between 1 and 4 p.m. I would support the motion to adjourn.

Dr. Swann: I think the issue of the public health concerns that has been raised is an important and a timely one. I would suggest, given the motion to adjourn, that a friendly amendment would be to include this discussion, at least briefly, on the public health issues which are continuing and potentially refer the rest of the agenda to a future meeting.

The Chair: Thank you, Dr. Swann.

I think the deputy chair wanted to comment.

Ms Pastoor: Yes. I was just going to say that I think we have spent – what? – eight minutes deciding whether we're going to adjourn or not. We could have had a discussion in the eight minutes that, in my mind, we've sort of wasted. So I would just like to, if possible, make the friendly amendment that we stay till 4:30 and then call it a day.

The Chair: Thank you very much.

I'm advised that it's not really in our purview to amend a motion to adjourn. The chair is quite happy to facilitate a small amount of additional time if that's the wish of the members. As I said, any other business to be added to the agenda I was not informed of until earlier today, so I must confess to feeling somewhat surprised but certainly respectful of your desire to bring the matter before the committee.

I'm going to call a vote, then, on the motion to adjourn. Should that vote be defeated, then I guess we'll have another motion on whether we continue to meet for a short time further. Those in favour of the motion? Now members on the phone.

Dr. Swann: I'm not in favour of the motion to adjourn.

The Chair: Thank you.

Mr. Denis?

Mr. Denis: Yes. I am in favour of the motion to adjourn.

The Chair: Okay.

Mr. Fawcett?

Mr. Fawcett: Yes. I'm in favour.

The Chair: If you could just inform me of the vote result, please. Is the motion defeated?

Mrs. Dacyshyn: I'm not sure that everybody voted.

The Chair: I'll just ask members to so indicate. Those in favour, please? Thank you. We have a motion in favour to adjourn at this time.

Just prior to adjournment, in terms of the next meeting, if I could just make a couple of comments because it is perhaps going to be some time before we meet again. The business on the agenda that we didn't get to was the communications plan. I think everyone is aware that the advertisement went out. There's a deadline of August 15 for written submissions. You'll be kept informed by the clerk as those are received so that you can review them.

There are some additional suggestions for our consideration that are going to be presented by Legislative Assembly Office staff, which we'll take up at the next meeting, and if necessary we'll communicate with members by e-mail prior to that if things are of a nature where we need to gather some feedback from the committee. Okay?

Ms Sorensen: I'm sorry, Mr. Chair. If I could just ask one quick, quick question. One of the things that we want to do is the news releases. If we can get just a consensus that we can do that via e-mail because we'd want to do a news release right away.

The Chair: Okay.

Ms Notley: You know, I'm sorry; I need to raise a concern here. We just had a motion to adjourn, such that we're not able to discuss an issue that some members of the committee believe is very important. I'm quite nonplussed that we are now continuing to have discussions about other issues of the committee.

The Chair: You know, Ms Notley, you're quite right. Thank you very much.

We will be in touch with respect to the agenda for the next meeting as well as polling you on meeting dates for the next meeting.

Thank you very much to everyone who was here today. Thank you very much to the officials and LAO staff for all the work that went into preparing the research materials.

[The committee adjourned at 4:09 p.m.]

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