Legislative Assembly of Alberta

The 27th Legislature
First Session

Standing Committee
on
Health

Wednesday, September 10, 2008
9:04 a.m.

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Standing Committee on Health

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Standing Committee on the Health

Participants

9:04 a.m. Wednesday, September 10, 2008

[Mr. Horne in the chair]

The Chair: Ladies and gentlemen, good morning. Welcome to this meeting of the Standing Committee on Health. I'd like to formally call the meeting to order and, of course, welcome all of you here.

Just a couple of notes to remind the committee members and the presenters who are here today, please, not to touch the microphones as they are operated remotely by *Hansard* staff, and please don't leave your BlackBerry on the table and turned on as it does interfere with the audio equipment. We'll be using video conferencing as well today, so it's particularly important that we try to minimize any electronic interference. This meeting is being streamed live on the Internet as you may be aware.

Before we get into the agenda, I'd just like to give the committee members and staff seated at the table the opportunity to introduce themselves, beginning with the deputy chair, please.

Ms Pastoor: Bridget Pastoor, Lethbridge-East.

Mr. Quest: Dave Quest, MLA, Strathcona.

Mr. Vandermeer: Tony Vandermeer, MLA for Edmonton-Beverly-Clareview.

Mr. Dallas: Cal Dallas, Red Deer-South.

Mr. Olson: Good morning. Verlyn Olson, MLA for Wetaskiwin-Camrose.

Dr. Sherman: Raj Sherman, Edmonton-Meadowlark.

Ms Dean: Good morning. Shannon Dean, Senior Parliamentary Counsel.

Ms LeBlanc: Stephanie LeBlanc, legal research officer, Legislative Assembly Office.

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

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

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

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

Dr. Swann: Good morning, all. David Swann, Calgary-Mountain View.

Mr. Denis: Jonathan Denis, Calgary-Egmont.

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

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: I'm Fred Horne, MLA, Edmonton-Rutherford and chair of the committee.

As you know, we've got a very full agenda before us today. The bulk of the meeting will be devoted to hearing presentations on Bill 24 from individuals and organizations that responded to our advertisement inviting submissions on the bill. We have until approximately 10:15 this morning to complete the business portion of the meeting, so I'll just note in advance that we have a finite amount of time to get through business, including some business carried forward from the last meeting.

I'd like to begin, then, with approval of the agenda. Could I have a motion to approve the agenda, please? Mr. Olson. Any discussion? Those in favour? Any opposed? The motion is carried. Thank you very much.

Item 3, adoption of the minutes for the meeting of July 9, 2008. May I have a motion, please, to accept the minutes? Mr. Dallas. Any discussion?

Mr. Olson: I'm sure I was at that meeting, but I don't see my name listed. I haven't had a chance to go back and double-check my calendar to see, but I just wanted to note that and ask if maybe somebody could check to see whether I was there, I guess.

The Chair: I believe you were here. Any other changes? Then assuming Mr. Olsen was here, can I call for a vote, please? Those in favour of approving the minutes with that correction? Those opposed? The motion is carried. Thank you.

Item 4 is Old Business. As you'll recall, at our meeting on July 9 the committee did not have an opportunity to deal with an issue that Ms Notley asked to raise under Other Business. I just wanted to thank you, Ms Notley, for providing your motion in advance of this meeting and invite you to make your motion.

Ms Notley: Thank you very much. As well, I appreciate the fact that we were able to get a clear time when the motion would be addressed in the meeting, so thank you to the chair for that. I'm assuming I can review the motion and speak to it.

The Chair: Yes. If you care to move the motion and then go on.

Ms Notley: Okay. The motion as it appears, actually, in the agenda is simply that

> the Standing Committee on Health inquire into the recently announced . . .

Not quite as recent now but nonetheless.

> . . . departure of several senior public health officials from Alberta Health and Wellness and that the committee schedule a meeting during which these officials – Dr. Ameeta Singh, Dr. Karen Grimsrud, and Dr. Gloria Keays – the [then] Deputy Minister of Health and Wellness, Ms Paddy Meade; and the Minister of Health and Wellness, Hon. Ron Liepert, be requested to appear to answer questions [from the committee] regarding the matter.

The Chair: Just a notation that we don't require seconders for motions in committee. With that, I'd invite you to speak to the motion first, if you like.

Ms Notley: Thank you. The reasons around which I would urge the committee to consider adopting this motion can be broken into what I've characterized as sort of four general areas. The first one relates, of course, to the mandate of this committee. As you know, this committee has a very broad mandate to inquire into a number of different matters, including those relating to Health and Wellness. In particular, section 52.07(2) of the standing orders setting up the committee states that

> a Policy Field Committee may on its own initiative, or at the request of a Minister, inquire into any matter concerned with the structure,

> organization, operation, efficiency or service delivery of any sector of public policy within its mandate.

I would suggest, then, that the kind of inquiry that I'm recommending falls squarely within the authority of this committee.

9:10

Then the question becomes: why would we want to do this? Why is this particular matter being brought forward? I would suggest that the first element of that argument relates to what I would characterize as the urgency of the matter in the area of public health. As you know, on June 11 it was announced, or at least it appeared in the papers, that three top public health officials in Alberta unexpectedly resigned from Alberta Health and Wellness. That was in addition to one other senior public health official, who had left several months earlier. At that time most experts in the field identified their absence and their departure as a reason for there to be extreme concern in the area of public health. Because it's a very specialized area and there are very, very few people with their level of expertise available in the country, to lose four within six months of each other meant that this province's global approach to public health was at severe risk and was in great jeopardy.

This sort of assessment, I think, has been supported by a number of independent sources. As early as 2003 a national report – it was called the Naylor report – identified a nationwide shortage of public health professionals with that level of particular expertise and at the time identified that in October of 2003 Alberta had the second-lowest per capita number of public health officials in the country.

In July of 2007, after the problems which occurred in the East Central health region in the hospitals, there was a report prepared by the Health Quality Council that included recommendations. I believe the chair was Dr. John Cowell. One of the recommendations that he made was "Alberta Health and Wellness and/or the Department of Public Health should consider providing leadership and support to regions requiring specialized expertise in dealing with critical infectious disease incidents." So less than a year before the departure of these senior people we had a government-appointed group identifying the need for a more co-ordinated approach to public health issues within the province.

After the departure of the public health officials we also had the Alberta Medical Association president writing a public letter indicating that to ensure that "the health of Albertans is protected, it is important that the issues in the Office of the Chief Medical Officer of Health are urgently addressed." This was a public letter written by the president of the AMA.

June 12, 2008, the president of the Alberta Public Health Association, Dr. Louis Francescutti – I may not be pronouncing it correctly, and I apologize to the doctor – states that losing that many public health doctors at one time "could be considered a public health crisis."

June 19, 2008, a specialist in infectious disease who works with Capital health states, "There is no medical leadership in Alberta Health. The government can respond by saying, 'Oh yeah, we still have people in the regions . . .' but there are not dedicated people in every region doing STD control or TB . . . control" or "overseeing the provincial programs."

Finally, about a week after, on June 20, the public is told that the government itself knows that at minimum it will take three to four months to be able to effectively replace these doctors. That was in June. I'm not sure what the status of that is at this point. So I think it's fair to say that this is not simply a political motion. I think it's fair to say that there are a number of independent players within this process who have identified that we have a very significant problem.

Of course, as I'm sure all members of this committee know as well, subsequent to this motion's first being put forward, there were the concerns raised around the syphilis crisis and the rate of syphilis in Alberta. It's known that one of the departed doctors was a huge advocate for a strong, well-funded prevention program around syphilis. Certainly, it's come to our attention that that may have been one of the issues which led to her departure. Subsequently we see the numbers showing that there's a problem there. That's why I believe that there is a crisis.

Now, why is it that I think that we should be looking into it? Well, as I say, we are a committee with a mandate. I think there's a point at which we need to consider how not doing our job would reflect on how seriously we are taking this process. As members of the committee, as we've all talked about in different settings, we have an obligation not just to our party and our caucus but to the people who elected us. There is an issue. We sit on a committee that's been told that it has a job and a responsibility, so we need to take it very seriously, I think.

The other concern I have is that because there hasn't been a lot of information flowing from the government, what Albertans have at this point is that which has been reported in the press. I'm not saying that the impression that has been left is accurate. All I'm saying is that there is a certain impression that has been left. We have quotes from the health minister suggesting that originally the reason that these doctors left was because they were asking for too much money. We've subsequently had information disclosed with respect to what these doctors were making, and we know that they were making a great deal less than what doctors in other jurisdictions were making and even less than what similar doctors in the health regions were making. So there appears on the face of it, because we haven't been able to have a full public discussion, an inconsistency.

In addition, when discussion commenced regarding the syphilis outbreak, there were also some statements from the minister that may or may not have been accurately reported regarding the government's position on whether or not it has a role in protecting Albertans from sexually communicable diseases. I think these are all things that the public needs and deserves an answer to. That's why I believe it's important for us to be able to address it here.

Finally, I would say that my understanding of the authority of this committee is that we essentially have the ability – I don't want to call it immunity – to extend a certain amount of protection to people who appear before us to act as witnesses. So where we have been unable to engage the doctors in a transparent discussion of what they think needs to happen to best serve Albertans in the area of public health because of certain contractual limitations, I believe that were they here at this committee, those limitations would not be a problem, and we would be able to have a fuller discussion. The same exists with the former deputy minister and now official of the superboard. Of course, with the minister it doesn't matter either way. He can say what he wishes to say in either forum. But it's for that reason that we sought all of the people that we were asking for, to have them come here, and not just one or two of them, because we believe we need to have a very transparent discussion.

I think at this point I'll leave my introductory comments and reserve the opportunity to make some additional ones if it's needed. Thank you very much for giving me the opportunity to review these issues.

The Chair: Okay. Thank you, Ms Notley.

I'd like to invite discussion on the motion, then. Dr. Swann.

9:20

Dr. Swann: Well, thank you very much. This is a challenging issue

for us to come to grips with. I mean, as a committee of the Legislature charged with ensuring the presence and the proper functioning of a public health system, to lose the very officials that are charged with heading up our public health responses to infectious disease outbreaks, chemical contamination, disaster response co-ordinated both locally, regionally, nationally, and internationally: one can only say that the risks are there and that the more transparency on this issue and the more understanding that we have as legislators about what is and is not working in the public health direction in this province, the better.

How it is that the leaders of our public health response planning and program research and implementation do not find it compatible with their ability to do their jobs I think is a serious question. I guess I would support the need to have some further discussion about it at least, to understand more fully what the truth is behind these departures, what exactly we're doing to try and replace these individuals, to quell any concerns about either the financial question or the competence of the programs that are being provided, and to assure Albertans that we are in a position at all times to respond to anything that comes across the ocean or out of the ground or that is risking health within our environment. It's not at all clear that we have the capacity to deal in a timely way, in an effective way, in a most optimal way with some of these risks as a result of the loss of our leadership in this area.

It's hard to measure the level of risk. One can only say that we are exposed to food hazards and air quality changes and risks in air transport, the surface transportation system, fire. Any major threat to the public health depends on an intact public health system in which there are specific individuals with specific responsibilities that work through a whole series of steps to communicate at all levels in the country and even internationally, if necessary, to address problems in public health. It leaves us extremely vulnerable to these infrequent but potentially very serious public health risks.

So I do think it's within the mandate of the committee. I think it should be within our mandate, if not today then at some time in the very near future, to be able to hear more about this and to be able to speak authoritatively as the health committee about why we think this has to be addressed and what we think needs to be done to assure Albertans that we are doing our job and that our public health system is intact and that we are working as actively as possible to restore it to full function.

Thank you, Mr. Chairman.

The Chair: Thank you, Dr. Swann.

Mr. Fawcett, followed by Mr. Quest, please.

Mr. Fawcett: Yeah. I just wanted to say that I will not be supporting this motion for numerous reasons. I agree with the previous two members of this committee that public health is a very important issue. There certainly are some concerns throughout this province, and it's our role and our mandate in this committee to look at those from a policy perspective.

My biggest concern is that this motion seems to be dealing particularly with a human resource issue. I know that the Member for Edmonton-Strathcona, the mover of this motion, referred to a standing order that essentially said that the committee does have the mandate, when it chooses to, to look at operations within the various ministries that fall under this committee. It had a list there, and in no way did the list say human resources. There is a lot of, I guess, sensitive information when it comes to human resources, particularly around contract negotiations and those types of things, and some of the personnel matters when it comes to, you know, whether a contract is renewed or extended or renegotiated or when someone is hired or let go. I don't believe that this committee has the purview or even wants to go in that direction. I think that it opens the door to some micromanaging by this committee, which I think is inappropriate. I just don't want to go in that direction.

I don't think this particular motion gets to maybe what the urgency of the matter is. I don't see the connection. In any large organization like the government of Alberta or any private company or any other public bureaucracy people are hired and let go and contracts aren't renewed on a daily basis. I'm not sure if it is the mandate or even the intention of this committee to get involved in those types of day-to-day operational issues, particularly on the human resource side, when there's confidential information that goes with those issues.

The last reason why I will not be supporting this is that I don't particularly think it's appropriate for this committee to bring former employees of the ministry in front of the committee. I'm not here to question whether they would provide us with appropriate issues, but obviously a decision has been made, and we're to move forward and discuss the issues. I'm not sure if bringing former employees in front of the committee is going to offer any greater insight into how we move forward in this province.

For those reasons I will not be supporting this motion and encourage all other members of the committee to not support it as well.

The Chair: Thank you, Mr. Fawcett.

Mr. Quest: I also will not be supporting this motion. We have been asked by the Legislature to review a 107-page very complex piece of legislation here. We've asked people to bring submissions. I'm sure you've all read through some of them. A great deal of work has gone into this. We have a lot of work ahead of us. This needs to be our priority, certainly, at this time. I'm sure that as a committee, I guess, we do have a broad mandate. Again, I can imagine that if we're going to wander off into contract negotiations on human resources every time something like this comes up, we're going to be looking at this a year from now. I just can't imagine going off in that direction at this time.

We have a very, very full agenda ahead of us. We have a big job to do, and I think we need to stay on it. Again, for that reason I will not be supporting this motion.

The Chair: Thank you.

Are there others? The deputy chair.

Ms Pastoor: Thank you, Mr. Chair. I will be supporting this motion for a number of reasons. The fact that these doctors are willing to come to this committee at least leads me to believe that they really feel that they have something to say and that they want us to hear it. Clearly, they have issues or they wouldn't be willing to come to this committee. I think that they'd probably feel much more comfortable to be coming to a proper forum as opposed to airing concerns through the media, which, as we all know, tends to take on a life of its own.

I'm not sure that the contract here really is the issue. For one thing, I think that if we talk about it just on a contractual basis and say that we would support a gag order, to me, that's not a very transparent process. I think that the issue here is that these people feel very strongly that Albertans – and certainly it could be, as Dr. Swann has pointed out, into national and international because we all travel so much. This is an issue of public safety. These people feel very strongly that public health safety is at risk, and I think that we should hear what their thoughts are on this.

9:30

The other thing is that within the last month in Lethbridge we've had two babies born within a day of each other, both of whom had to be flown to Calgary, with a mysterious infection. One of the babies died, and the other one is fighting for its life. I'm not sure that the proper amount of information has been put out on that. To me this is a public health issue. I'm one of the people who is comfortable, I think, with a superboard because in an instance like this I really would like the public health doctor or official or whatever title they have – I'm sorry; I don't know – for the province to be able to stand up and address an issue like this not only for the families that are involved but also for every other woman that's going to go into that hospital to have a baby to not have to worry about infections. There has been some investigation that said that infection control was within the boundaries of what it was supposed to be in the standards in the hospital. Nevertheless, two little babies – one died, and one is fighting for its life – have some kind of mysterious infection. That's why I feel it's very important that these people come and express their feelings on what they feel is a public health issue. It's got nothing to do with their contracts.

Thank you.

The Chair: Thank you.

Mr. Dallas.

Mr. Dallas: Thanks, Mr. Chairman. I will of course be speaking against the motion, and the deputy chair has very eloquently pointed out the reasons why that would be the case. It would appear that some members of the committee are willing to take a human resources issue and transfer that into a whole variety of issues that, while they may be of interest to the public as a whole, I think are largely fictional. I wasn't aware that we had already vetted potential attendees as a result of the motion, and I'm extremely disappointed that, you know, what appeared to be a straight-up motion, certainly, is carrying with it some other agenda to undermine a variety of systems that are in place, obviously, to protect public health. So I will be voting against the motion.

The Chair: Okay. Thank you.

Before I give Ms Notley an opportunity for closing comments, do any other members wish to speak?

Dr. Sherman: I thank the hon. member for bringing up this issue. It's a very important issue. The real issue here isn't contracts. It isn't employees who have left and for what reason. The real issue is confidence in public safety. I would wish to amend the motion.

I think it's important. The hon. Member for Edmonton-Strathcona has brought up issues of confidence in public safety. It's in the newspapers. You've got the Alberta Medical Association and public health docs questioning the confidence. If leaders in the medical community question their confidence in public safety, so will the public.

The way in which I would like to amend the motion: I believe it's important for the public to be reassured that regarding threats to public health such as pandemic preparedness, environmental issues, infection issues, and other public health issues the public is safe, that the government is doing the job that they've been elected to do. In doing so, I believe it's important for the minister and the acting public health head to appear here. I would like to amend the motion by removing the past employees and the past people who worked in this department because they no longer are in charge of this area. I don't believe we should be getting into contracts and what happened to contracts. I think what we should concentrate on is: are we prepared to deal with public health threats? I think it's important to talk to the people actually running the public health system now, which are the current public health heads and the minister. I believe confidence needs to be restored for the public. However, I do not support bringing the previous deputy minister or the previous employees to this committee for questioning. I do feel it's important for the minister to answer these questions as well as the current public health head.

I don't know how I would word that motion.

The Chair: Dr. Sherman, what would be happening, then, if I understand you correctly, is that you wish to move an amendment to the motion. I would require some specific wording from you, and then the discussion would move to your amendment prior to voting on the motion.

Mr. Vandermeer: While they're working on that, can I get a point of clarification? How do some of the members of this committee know that those people would be willing to come in front of us, seeing they no longer work for Alberta?

The Chair: Without kind of sidetracking, what I can confirm with you as the chair is that none of the people mentioned in the motion have approached the chair and requested to appear before the committee. As chair that's really the only indication I can go by that I could formally recognize. I have not been approached directly by any of the individuals named, nor have I been approached by someone else on their behalf acting in some kind of official capacity. I hope that would answer your question.

Mr. Vandermeer: So how do some of us know that they're willing to come?

Ms Notley: Mr. Chair, if I could.

The Chair: Very quickly, but we're going to proceed with the amendment.

Ms Notley: Just to clarify – and the deputy chair may have information that I don't – in our crafting of the resolution, we've had no discussions with the doctors, so we've put this out there hoping that this committee can exercise its authority to bring them here. They've not indicated, certainly, to me that they want to come or anything. It's more a question of whether this committee is prepared to exercise their authority to bring them here. I just want to clarify that, that there haven't been on my part or our part any discussions, and I understand from my colleague Dr. Swann that there haven't been as well from their caucus. I think it may just be a misunderstanding.

Ms Pastoor: It is. I'd like to clarify that. Thank you for that. Yes, it was a misunderstanding on my part that, in fact, they were aware and wanted to come. Thanks.

Mr. Vandermeer: Can I make one other point? It has been referred to as the superboard a number of times here this morning. It is not a superboard; it's the Alberta Health Services Board. I think that we should refer to it in the proper manner.

The Chair: Point well taken. Thank you, Mr. Vandermeer.

Dr. Sherman, do you have an amendment you wish to move?

Dr. Sherman: That the Standing Committee on Health invite the

minister of health as well as the acting chief medical officer of health to discuss public health policy to answer questions of the committee.

The Chair: Great. We'll proceed, then, with discussion on the amendment.

Ms Notley: I appreciate and welcome the spirit of the amendment in terms of trying to get at some of the issues, so I thank the member for that. My concern about its being recrafted in that way is that the information that we have been able to glean thus far is that there are, in fact, some differences of opinion in terms of the direction that needs to be taken with respect to the priorities that are dedicated to public health. This isn't about contract negotiations. Okay? That's my point. My point is that it never was about contract negotiations and that, in fact, it's about the health and quality of our public health system.

By only having the minister come in, unfortunately we do not get at the other side of the debate, shall we say. The fact that they're former employees or current employees or whoever really is irrelevant. Our authority extends – we can invite and ultimately subpoena, but hopefully just invite, anybody to attend. Whether they are current employees or former employees is not relevant to the discussion except, I suppose, that what we're talking about is inviting former employees who may have left because they have a concern about the degree to which they're able to meet their professional obligations within the context that they were working.

9:40

So for the breadth of the debate I think we need to have at least one of the other doctors that was here. I'm not necessarily even convinced it needs to be all of them because I'm not about getting into the specifics of their negotiations. What I'm interested in is why it is that three-quarters to five-sixths of the leadership in that organization have left. You know, it might be the case that just one of the departed ones who had some immunity and did not have a current employer-employee relationship with the minister might be able to appear before this committee. For that reason, that's why I am not comfortable with excluding all of the public health doctors who left.

In terms of it being a human resource matter, I mean, the analogy that I would make is this: if your cabinet had one cabinet minister leave, then that would just be one of those things that happens, but if you had 15 cabinet ministers leave, presumably there's a problem with how the meetings are being run. That's what effectively happened in the public health department, that the vast majority of the leadership in Alberta's public health left. So it's not simply a human resources matter. It simply isn't. It's a much greater and significant issue.

The Chair: Thank you.

Are there any other speakers specific to the amendment now, not the original motion?

I'm going to call the question on the amendment, then. Those members in favour, please raise your hand. Could I have the clerk read back the amendment, please?

Mrs. Sawchuk: Mr. Chair, I stand to be corrected on this because I did miss the end of it. That the

> Standing Committee on Health request the attendance of the minister of health and the acting chief medical officer of public health to respond to questions related to the delivery of public health in Alberta.

The Chair: Thank you. We need to be really clear here, Dr. Sherman, so if this is not your amendment, let us know.

With that, then, I would like to call again those in favour of the amendment. Five. Those opposed? Abstentions? None. Okay. That's everyone. The amendment is carried. I'll probably appreciate some advice on this from the clerk or counsel. I'm assuming that the intent of the amendment was to delete the original motion in its entirety and replace it with the amendment that was just voted on.

Mrs. Sawchuk: Mr. Chair, I'm sorry. I have to interrupt. I've got 5 for the motion; 4 opposed to the motion. The chair, of course, doesn't vote. That leaves us with one member who didn't raise their hand.

Ms Notley: I was the one that didn't raise my hand.

Mrs. Sawchuk: You can't abstain from a decision of the committee.

Ms Notley: Okay. I'll support the amendment with reluctance.

The Chair: Okay. The amendment is carried. So we won't be voting, then, on the original motion.

Ms Dean: Well, I think the general will of the committee is for that motion to go forward, so I don't think a vote is required.

The Chair: I would concur. The intent appeared to be to delete the original motion and replace it.

The motion is carried. We'll deal with the question of how we will implement that motion, I guess, at a future meeting.

I will remind the committee that in addition to the standing order that was quoted by Ms Notley, Standing Order 52.07(3) provides that "an order of the Assembly that a Policy Field Committee undertake an inquiry shall take priority over any other inquiry, but a Policy Field Committee shall not inquire" – I'm sorry. I'm quoting the wrong section. Perhaps you could help me out, Ms Dean. There is a provision in the standing orders that business referred by the Assembly takes precedence over other inquiries that may be initiated by the committee.

Ms Dean: Yes, Mr. Chair. It's Standing Order 52.04.

The Chair: Thank you. On that basis, then, we will have a discussion at the next meeting, but we will be proceeding on our timetable for the review of Bill 24. My obligation as chair is to see that we do that. Okay? Thank you very much.

Item 5 is Document Update. Just as a reminder for members, some weeks ago the Department of Seniors and Community Supports provided to the committee a document which compares the act before us with the Mental Health Act and, I believe, as well incorporates some comparison with the former Dependent Adults Act. This was at the request of committee members. That comparison document was provided over the summer, and I'm assuming that everyone has had a chance to review it.

Ms Brenda Lee Doyle is here this morning from the department. She is available to answer any questions that we might have with respect to that document.

Ms Doyle: Thank you, Mr. Chair.

The Chair: Perhaps before any questions, was there anything you'd like to add, Ms Doyle?

Ms Doyle: Perhaps I'll just clarify the three documents that were sent out. The document with the three columns is an updated document of what you had received in June, which was a two-column document. The third column is our analysis of how there is potential linkage with the Mental Health Act, as you indicated. What we did is we went over every single part, every row of the Dependent Adults Act and the Adult Guardianship and Trusteeship Act to show the linkage.

Just as an overall comment, the Adult Guardianship and Trusteeship Act is a very broad act whereas the Mental Health Act is more specific, and when there is more specific legislation, you go to the specific legislation. The Mental Health Act, if a person is a formal patient, is the legislation to go to. So that's the first document.

The second document is a chart just talking about the interaction between guardianship-specific decision-making and when a person is a formal patient under the Mental Health Act. The third document is just supplementary notes based on the rows.

These documents were shared with our health colleagues so that we would have a similar kind of level of understanding.

The Chair: Thank you. Are there any questions for Ms Doyle?

I just wanted to say on behalf of the committee thank you very much for doing this. It was a very useful analysis, and it clarified a number of points, some of which were addressed in other submissions that we received in response to the advertisement. It's very useful information to have on hand, so thank you very much.

Ms Doyle: Great. Thank you.

The Chair: Seeing no questions, then, I'm going to move to the next item on the agenda. For this one, ladies and gentlemen, if someone is willing to make a motion, I'd like to suggest that the committee move in camera to consider item 6, Handling of Submissions.

Mr. Denis: I'll make that motion if you like.

The Chair: Mr. Denis. Any discussion? Those in favour? Opposed, if any? That's carried.

Okay. I'd ask if we could have staff leave the room with the exception of the clerk and Parliamentary Counsel.

[The committee met in camera from 9:50 a.m. to 9:57 a.m.]

The Chair: Ladies and gentlemen, the committee is back on the record. We have considered a particular matter, and we have a motion on the floor, which I'll ask the clerk to read back along with the name of the mover, which, I believe, is Mr. Quest.

Mrs. Sawchuk: The motion is moved by Mr. Quest that

> the Standing Committee on Health make the submissions received available to the public with the exception of those portions containing the following types of information:
>
> (1) personal information other than name,
>
> (2) where the submitter has requested that certain information not be made publicly available,
>
> (3) where the submission contains information about a third party, and
>
> (4) where the submission contains potentially defamatory material.

The Chair: Thank you. Any discussion on the motion? Those in favour? Any opposed? The motion is carried. Thank you.

Item 7 is Review of Submission List and Report on Written Submissions. As members are aware, a document prepared by Legislative Assembly Office staff was circulated prior to the meeting. It summarizes the submissions received in response to the advertisement inviting input on Bill 24 and provides some additional analysis. I'm going to ask Philip Massolin and Stephanie LeBlanc to speak briefly to the document, and then we'll open it up for questions.

Dr. Massolin: Great. Thank you, Mr. Chair. I would just like to take this opportunity to introduce the committee to Stephanie LeBlanc, to my left. She is the Legislative Assembly Office's new legal research officer. She started about a month ago, and she was asked to provide a summary of the written submissions to this committee. She will now present an oral presentation on her work.

Stephanie.

Ms LeBlanc: Thank you. To date we have received a total of 13 written submissions. Many of these submitters will be making oral presentations to the committee today. If you refer to the report, the names of all the submitters are listed on pages 16 to 17. There were many issues raised by the submitters, and I'm going to attempt today to highlight the main issues focused on in the submissions.

Before moving ahead with that, there was one minor clarification made to the report. It's on page 4 under the point entitled Capacity Assessments. If you printed the submissions report last night or this morning, you will have the amended version. The first version of the report that was posted indicated that two physicians are required to issue a certificate of incapacity, and a physician or a psychologist has the authority to issue a compulsory care certificate under the Dependent Adults Act. This is the case, but the report also should have noted that in a regular court application for a guardianship or a trusteeship order only one report is required. This report must still, however, be made by either a physician or a psychologist.

Moving now to the summary of the issues, comments were received with respect to the new categories of decision-making authority introduced by Bill 24. These comments are summarized on page 6 of the report. Bill 24 introduces supported decision-making and co decision-making as options for adults who do not have the same limitations as those who would require a guardianship order but would benefit from some support. Whereas two submitters strongly supported the introduction of these new powers, another submitter suggested that these new categories would only complicate the process of obtaining a guardianship or other order.

Another issue commented on by submitters was the change from the requirement for a review to be held within six years to the court being given discretion to order a review whenever it sees fit or, if capacity will not improve in the future, the discretion to not order a review at all. The comments on this issue are found on the bottom of page 8. One submitter suggested that six years was too long a time frame for a review to occur, and another acknowledged that there must be safeguards for vulnerable people but found that the new review periods were a positive change given that the application and review process is onerous for those who are guardians over adults whose condition will not improve in the future.

A change from the current legislation that received support from submitters was the ability of persons not resident in Alberta to be trustees. Currently nonresidents are only permitted to be guardians. These comments are found under the heading Non-resident Trustees on page 9.

Under the heading Authority of Trustees you will see that the initial comment calls into question the ability of the court to extend a trusteeship order to property outside of Alberta, and this comment relates to section 54(4)(b) of Bill 24.

Moving now to the issue of testamentary dispositions, you will see

the comments of two submitters, the first at the top of page 10 and the second on page 12 under the heading Testamentary Authority. Section 84 of Bill 24 states that a guardianship order or a trusteeship order does not permit a guardian or trustee to make a will or other disposition with testamentary effect on behalf of the adult. Two submitters suggested that this provision be clarified to indicate whether this permits a guardian or a trustee to change a beneficiary designation if, for instance, the beneficiary predeceases the adult. One of the submitters also requested clarifications to this provision relating to whether a trustee can make, change, or revoke a will or can change financial accounts to joint ownership with the right of survivorship.

Another requested clarification by the submitter was that section 59 of Bill 24 be amended to permit corporate trustees to make investments in pooled or mutual funds offered by it or by an affiliated party.

The submitter also suggested that upon the death or incapacity of a trustee, the personal representative or a guardian or trustee of the original trustee should be able to step in to manage the finances of the represented adult. Currently in section 64 of the bill the public trustee may step in upon notification of the death or incapacity of the trustee.

Turning now to page 11, this submitter also requested that the bill be amended to allow pretaking of compensation by a trustee. At the bottom of page 11 you will note that one submitter suggested that the role of review officer as established by section 80 of Bill 24 might be an unnecessary position that could lead to inefficiencies.

Moving to page 12 under the headings Health-Care Decisions and Capacity Assessments, submitters noted that the definitions of health care provider and capacity assessor were left to be determined in the regulations. In terms of capacity assessors one submitter disagreed that the definition should be expanded beyond physicians and psychologists and felt that other professionals might not be able to rule out temporary or treatable causes of impairment. This submitter also requested that there be a standard for capacity outlined in the legislation or regulations.

Bill 24 does not currently provide for compensation to be paid to guardians, co decision-makers, or supported decision-makers. Two submitters suggested that co decision-makers and guardians should be entitled to compensation in the same manner as a trustee.

Other general comments included the suggestion that an adult who may be the subject of an order under the legislation be provided with independent legal counsel and advice and that once an order is granted, the adult be provided with information regarding their rights by a person independent to the situation.

One submitter spoke specifically to the overlap between Bill 24 and the Mental Health Act – we also have that document from Ms Doyle to help us out with that – and that submission is submission 8.

10:05

In terms of the implementation of the legislation submitters requested that a strategy be in place to communicate the new framework to those affected by the bill.

Finally, looking at page 16 of the report, you'll see that most submitters did not voice their support or lack of support for the bill. There were many comments made about specific provisions of the bill, but only two submitters suggested that the bill be rejected in its entirety.

Subject to any questions those are my comments. Thank you.

The Chair: Thank you very much. Any questions on this particular document? We will have the opportunity to refer to it on an ongoing basis in our discussions of the report. Thank you very much. Again, it was something very useful. Much appreciated.

It looks like we're going to keep to time here. We have two items to complete before 10:15. The next item is 8, Communications Update. Melanie Friesacher, I understand you have a brief report to the committee.

Ms Friesacher: Thank you, Mr. Chair. As a result of our written submission request, or advertising, a total of 13 submissions were received. As the ad referred to the website, we thought we'd have sort of a look at the website activity. Between July 1 and August 26 there were 805 user sessions and 1,319 page document views. The most downloaded file was the health ad that was posted online. Looking at the bigger picture, in July the Adult Guardianship and Trusteeship Act was number 7 in the top 10 downloaded files with 2,361, and in August it was number 5 with 1,261, so some activity spikes that occurred right after the advertising campaign began and the week of the deadline of the ad campaign. We got a little insight into our advertisement. If there are any questions to that?

The Chair: Any questions? Thank you very much. Sounds like our advertising was successful.

Ms Friesacher: Agreed.

The Chair: Then item 9 is entitled Scheduled Presentations Based on Written Submissions. I'd just like to note that at the last meeting I had undertaken to determine the interest of the Alberta Health Services Board in participating in the review process. I haven't had the opportunity to complete that yet. I will complete that discussion and report back to the committee at the next meeting.

The other thing I want to report before we get into the session at 10:30: all the parties that wrote to us were invited to make an oral presentation. All accepted except for one private citizen who was out of the city today, so we were able to accommodate everyone who expressed an interest. I just want to note that for the record.

Finally, since the deadline the northern section of the Canadian Bar Association has indicated that they would like to make an oral presentation to the committee. They were not in a position to proceed at today's meeting. I've inquired, but we haven't been able to clarify whether they would provide a written submission to the committee, as the other presenters have, prior to appearing before the committee. So I guess my question is: would the committee like to hear from the Canadian Bar Association at the September 24 meeting?

Mr. Olson: I would definitely like to hear what they have to say.

The Chair: Mr. Olson, would you care to move that?

Mr. Olson: Sure.

The Chair: Okay. Moved that

> the Canadian Bar Association be invited to meet with the committee on September 24.

Discussion? Those in favour? It's carried. Thank you.

That completes the business portion of the meeting. With that, we'll reconvene, if I could ask, promptly at 10:30. We'll begin with the presentations at that time. Thank you.

[The committee adjourned from 10:09 a.m. to 10:30 a.m.]

The Chair: Good morning. We will reconvene the meeting. I know

we still need a couple of members, but hopefully they'll join us in the next few moments.

I'd like to welcome Ms Jodi Skeates, legal counsel, Canadian Life and Health Insurance Association, and Mr. Dave McKee, assistant vice-president and associate general counsel from Sun Life Financial, both of whom are joining us from Toronto. Good morning, Ms Skeates, Mr. McKee. On behalf of the committee thank you very much for your written submission and for taking the time to appear today. We appreciate it very much.

I believe that on the phone we're going to be joined by Mr. Gary Senft, assistant vice-president and senior counsel for the Great-West Life Assurance Company, the London Life Insurance Company, and Canada Life Insurance Company. He will be joining us from Winnipeg.

Mr. Senft: Yes. Good morning. I'm here.

The Chair: Good morning, Mr. Senft. Thank you for being here.

As you know from the prework that was done to organize this, we've allotted 30 minutes for each presentation on the bill. So if I could just ask, you know, respectfully in advance: we are trying to hold this to a 15-minute presentation and then leave at least 15 minutes for specific questions from members of the committee. In order to help keep us on track, the clerk of the committee, who is seated to my right, Mrs. Sawchuk, will hold up a sign that indicates when five minutes are left in the presentation portion. I'd ask, when you see that, if you could try to wrap it up within about five minutes. That will ensure that committee members get to interact with you directly and ask questions and have the benefit of your responses.

Please proceed.

Canadian Life and Health Insurance Association Inc.

Ms Skeates: Thank you very much, Mr. Chairman and members of the committee, for giving us this opportunity to make comments on Alberta's Bill 24, Adult Guardianship and Trusteeship Act. As the chairman pointed out, my name is Jodi Skeates. I'll skip over the other introductions in the interest of time.

I will make a few introductory comments on behalf of the CLHIA, at which time my colleagues may wish to elaborate on something, but I hope we'll be able to wrap up within the 15 minutes allotted so that we have lots of time for questions.

By way of background the Canadian Life and Health Insurance Association, or CLHIA, represents life and health insurance companies, accounting for 99 per cent of the life and health insurance in force across Canada. The industry protects about 24 million Canadians and about 20 million people internationally. To narrow that down and make it specific to Alberta, the industry protects about 2.4 million Alberta residents and makes $4.9 billion a year in benefit payments to Alberta residents, of which 90 per cent goes to living policyholders as annuity, disability, supplementary health, or other benefits, and the other 10 per cent goes to beneficiaries as death claimants.

In addition, the industry has $54.3 billion invested in Alberta's economy, and a large majority of life and health insurers that carry on business in Canada are licensed to operate in Alberta.

We work with various regulators in developing legislation, and the CLHIA commends the government for the development of Bill 24. It's a great feat. It looks really good. But we do have comments on one particular section of the bill that has particular significance to the life and health insurance industry. It also has a significant impact on the financial and estate matters of a represented adult. That subsection, as you know from our submission, is section 84(2) of the bill, which provides that "a guardian or trustee of a represented adult has no power to make, on behalf of the represented adult, a will or other disposition that has testamentary effect." I draw your attention to that last phrase: "or other disposition that has testamentary effect."

Certainly, some individuals would view the designation of a beneficiary on death under a life insurance policy to be a testamentary disposition. The issue has been considered judicially across Canada with varying results. It hasn't received a lot of judicial consideration, and the results have been somewhat inconsistent. Given that that phrase "other disposition that has a testamentary affect" is not defined in the bill, an argument could be made before the court that a beneficiary designation is covered under subsection 84(2) of the bill, thereby not allowing a guardian or trustee to make a beneficiary designation on behalf of the represented adult.

Just to take a step back, as you know, the right to designate a beneficiary is probably the single most important personal right an insured can exercise under an insurance contract. A beneficiary designation ensures that proceeds from life insurance claims are paid directly to the person or persons the insured intended to receive it. This means that the proceeds may be available to the insured's family after death more quickly than if the family had to wait for the estate to be administered. It is also a more cost-effective way because no probate fees are taken away from the insurance monies. So if it's paid directly to the beneficiary, it's quicker and more cost effective.

Insurers are routinely asked to accept and act on documents executed by an attorney appointed by an insured under a power of attorney. There is some uncertainty as to whether or not an attorney can legally revoke a beneficiary designation or appoint a new beneficiary under an insurance contract. These uncertainties are best solved through clarifying legislation. Certainly, the CLHIA has been advocating for legislative change in this area for a number of years. The same issue may apply to guardians and trustees, who, like an attorney under a power of attorney, are substitute decision-makers.

From our industry's perspective, legislation could provide clarity in this matter either by explicitly stating that the substitute decision-maker – for example, in this bill it would be the guardian or trustee – could not exercise these powers in respect of an insurance contract at all, or the legislation could clarify that they could exercise these powers but in certain circumstances.

There may be circumstances where it may be desirable to allow a guardian or a trustee to make a change to a beneficiary designation under certain limited circumstances, providing certain safeguards such as court approval. Such safeguards can mitigate against an inappropriate designation being made by the guardian or trustee. In any event, it would be important in the view of the CLHIA to clarify by statute the ability of the represented adult's guardian or trustee to designate a beneficiary and, if this power is granted, the circumstances under which it would apply.

I'd like to give the committee a few practical examples to put this in context. The easiest example that everyone would understand is the situation where a beneficiary predeceases the insured. Certainly, in that situation the beneficiary designation would fail, and the money would then revert to the insured's estate.

There are many other situations, though, and I'll use the example of RRSPs. On occasion a trustee of a represented adult may find it necessary or financially prudent, really, for investment or other reasons to change the financial institution from which the RRSP is provided. In engaging in this activity, which I'm sure you would agree a prudent trustee may have to do in exercising his or her roles and responsibilities from time to time, it's not clear that the benefi-

ciary designation on the first RRSP when it's transferred over would actually be carried forward to the new RRSP investment. So there's a bit of a lack of clarity and a need to have clarity over this issue.

British Columbia is one province that has recently addressed and clarified its law in this regard. Its Adult Guardianship Act was amended through B.C.'s Bill 33, which received royal assent and came into force earlier this year, on May 29. The revised provision is section 17(4) of that legislation. It's also set out in our submission to you. As a result of the change B.C. made to its legislation, it is clear that in British Columbia a property guardian can designate a beneficiary in certain limited circumstances.

10:40

CLHIA is a strong advocate of harmonization, with a view to achieving consistency in the various rules across the provinces. We believe that it would not be difficult to align this issue. It would reduce administrative costs, and it would make it easier for consumers to move from province to province.

Based on the foregoing, the CLHIA recommends that Bill 24 be amended to include explicitly clear language allowing a guardian or trustee to create or change a beneficiary designation in certain circumstances along the lines of British Columbia's Adult Guardianship Act. To this end, we would be more than pleased to assist the committee in making technical amendments as they see fit.

In closing, I'd just like to say again that the CLHIA appreciates this opportunity to review this bill and your taking the time to meet with us in person and to accommodate our various technological and geographical requirements this morning.

Pending any additional comments by Dave or Gary, we would be pleased to answer any questions you may have at this time. Thanks.

The Chair: Thank you very much, Ms Skeates.

Mr Senft, do you any comments you'd like to add?

Mr. Senft: No. You know, we worked with Jodi just in terms of the presentation itself. I think it's covered the points that we would want to make at this time, subject to questions that you may have.

The Chair: Okay. Thank you.

Mr. McKee, anything you'd like to add?

Mr. McKee: No. I think I'll look forward to your questions.

The Chair: Okay. I know that you can't see the entire committee. I promise you they're all here.

Ms Skeates: We saw the room, so we know it's filled.

The Chair: I'll just ask, then: are there any questions from committee members?

Mr. Olson: I'm just wondering if you can give me an example of where the B.C. legislation, 17(4)(b)(ii), would apply. You know, I'm trying to come up with an example of where that would have some practical application here.

Mr. McKee: I'm not convinced that that particular portion really accomplishes a whole lot because it would seem to me that if there was no beneficiary designated at the outset, the estate would become the beneficiary anyway.

I guess our focus is really on (b)(i). I don't think that (b)(ii) creates any problems or causes any harm. It just seems to me that it perhaps really isn't necessary. I suppose it allows the guardian or substitute decision-maker to specifically say the estate will be the beneficiary rather than having that consequence flow by operation of law.

Mr. Olson: Thank you. That was exactly my sentiment when I read it over. I just didn't see what it added.

Mr. Senft: Yeah, I would agree with that completely.

Mr. McKee: I think the heart of it and the heart of our recommendation is (a) and (b)(i).

The Chair: Thank you.

Any other questions from the committee? I'd like to ask one quickly, if I could. Sorry if you covered this earlier. In the British Columbia legislation the property guardian: is that the direct equivalent of a trustee under our proposed legislation?

Ms Skeates: That's my understanding, yes. It would be provided to the property guardian, not the – is it the personal guardian? It would be the equivalent of the trustee under Alberta, not the guardian for personal care.

The Chair: Okay. Just to clarify, you're not proposing that under our legislation we extend this to guardians as well?

Ms Skeates: It probably is best suited to remain with the trustee as the trustee would be the individual managing the represented adult's financial matters.

The Chair: Yeah. That's how I interpreted it. I just wanted to clarify. Thank you.

Mr. McKee: Right. I think that's right.

The Chair: Any other questions from the committee? It appears we have none.

Is there anything in addition you'd like to add?

Ms Skeates: I don't think so. I mean, it's a large piece of legislation but a small point we want to make. It does have significant impact. It could have significant impact on the financial estate affairs of a represented adult, so it's an important point.

Otherwise, we thank you very much for your time today.

The Chair: Well, we thank you very, very much for taking the time to provide a written submission and to appear. Your input has been very, very helpful. Thank you.

Mr. McKee: Thank you very much.

Ms Skeates: Okay. Thank you.

Mr. Senft: Thank you.

The Chair: We're 30 minutes ahead of schedule here, so we're just going to check and see if the next presenter is waiting outside.

Dr. Swann: Could I ask a question about that technology, or is this the appropriate time?

The Chair: Certainly. We're still on the record here. Dr. Swann has a question, and then we'll likely take a break before the next presenter.

Dr. Swann: Thank you. All of us, I think, are coming from various parts of the province. We can't make all these meetings, and it would be nice to have this technology available to us in our constituencies if that's possible. I've talked a little bit about that in previous correspondence and wondered if it is, in fact, so expensive that it is prohibitive. It seems to me to be much more expensive to travel across the province for some of these meetings, especially if they're two or three hours. I don't know where one would go in Calgary, for example, to connect up with the video conferencing, but I wonder if we've looked into that and what the costs are relative to having us actually drive and stay overnight in some cases.

The Chair: Karen may have some information.

Mrs. Sawchuk: Mr. Chair, we have had this issue arise before. There are facilities in most major centres for video conferencing that you rent. In Calgary the one that I know of offhand is Telus. They have a facility available that they rent out. It's just a meeting room with, you know, the required equipment.

To actually get into the cost, we would have to do a real breakdown. I mean, any information I have as to costs is years old.

Dr. Swann: Surely it would be cheaper than travelling.

Mrs. Sawchuk: Well, I wouldn't want to make a commitment in that respect. We can find out. If that is something that the committee is interested in, we can have some information for the next meeting.

Dr. Swann: Is it not existing, for example, in McDougall Centre in Calgary, in Government House?

Mrs. Sawchuk: Now, that I wouldn't know.

Dr. Swann: That would be a logical place for us in Calgary to potentially tie in without having to travel.

Mr. Dallas: Mr. Chairman, there is a network throughout the province that's been established by Community Futures. What restrictions there are in terms of the usage of that I'm not particularly aware of, but there would certainly be an opportunity for participants to present through that network and also, obviously, for interested Albertans to view the proceedings beyond the verbal record.

The Chair: Just in addition to that, there's also the Telehealth network, which I know on occasion is used for meetings other than health-related meetings. I'll undertake to look into this with the clerk and the LAO, if you like, and report back.

Dr. Swann: That's great.

The Chair: Okay. I'm going to suggest that we take a short break. Unfortunately, Dr. LaBuick is not supposed to be here until 11:15. I'm going to suggest we take a break. If we do that now, perhaps I could ask you to think about the possibility of forgoing the afternoon break if your schedules would permit, and that might allow us to make up a little extra time. Okay. We'll recess, then, until 11:15. Thank you.

[The committee adjourned from 10:49 a.m. to 11:14 a.m.]

The Chair: Good morning again. I'd like to call the committee back to order as we continue presentations on Bill 24. Our next presenter is Dr. Lyle Mittelsteadt, senior medical adviser with the Alberta Medical Association. It's nice to see you, Dr. Mittelsteadt.

Dr. Mittelsteadt: Thank you.

The Chair: Thank you very much for appearing before the committee and for the written submission that we received. The way we've been approaching this: I'm going to ask my MLA colleagues just to introduce themselves in a moment. We're asking for up to a 15-minute presentation, and that would leave us about 15 minutes for members to ask specific questions.

Dr. Mittelsteadt: Sure.

The Chair: To facilitate that, the clerk will signal you when there are about five minutes remaining in the 15 minutes rather than having the chair interrupt. As I say, we'll try to keep the whole thing to approximately 30 minutes. Thank you very much again for being here.

I'll just ask the elected members to quickly introduce themselves, beginning with Ms Pastoor.

Ms Pastoor: Yes. Bridget Pastoor, the MLA for Lethbridge-East.

Mr. Quest: Dave Quest, MLA, Strathcona.

Mr. Vandermeer: Tony Vandermeer, Edmonton-Beverly-Clareview.

Mr. Dallas: Cal Dallas, Red Deer-South.

Mr. Olson: Good morning. Verlyn Olson, Wetaskiwin-Camrose.

Dr. Sherman: Raj Sherman, Edmonton-Meadowlark.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

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

The Chair: There are two members who aren't present who'll be joining us here in just a moment.

Please proceed. Thanks.

Alberta Medical Association

Dr. Mittelsteadt: Great. First of all, I'd like to thank the members of the committee for allowing us to make a presentation on Bill 24, the Adult Guardianship and Trusteeship Act. We're very grateful for any opportunity we have to assist the government in these types of activities.

You have our written response, and I have nothing further in the way of written materials to provide to you, so I'll just basically try to expand on the points that we put forward. Just as background our response was generated based on feedback received from the sections of psychiatry, generalists in mental health, internal medicine, general practice, rural medicine, and all of the practising geriatricians within the province of Alberta. Most of the feedback we got back from physicians found that the act is a significant improvement on the old act, and we commend the government for bringing it forward.

Physicians view appointing a guardian or trustee for an individual as a very important and serious step, one that takes away the independent decision-making capacity of an individual and places it

in the hands of another. This step must only be taken when it is in the best interests of the patient. Therefore, assessment of capacity is a serious, careful process which must be undertaken by a physician or a psychologist who has clinical acumen, experience, and understanding of the process in order to complete the assessment accurately and thoroughly.

As you see by our submission, we raise five points regarding the Adult Guardianship and Trusteeship Act. I'll comment briefly on each of our five points.

The first is: a public guardian will only be appointed if no one else is willing. Some of our members raised some concerns about that particular wording as it is possible that the willing individual may not be well suited or have the patient's best interests in mind. We understand that there is language within the act which speaks about the suitability of someone who is appointed as a guardian, but some members felt that this language left some opportunities for individuals who may not have the patient's best interests to approach.

Our second point regards section 86 of the act, which allows a health care provider to select a specific decision-maker where an adult is thought to lack decision-making capacity for health management. This has the potential to cause difficulties for physicians who are faced with a family that is divided in its approach to further medical treatment of a parent or grandparent. One of the things physicians do not want is to be stuck in the middle of a dispute. Where the act specifies a ranking of specific family members, this has the potential to cause great difficulty within a decision-making process, and physicians are somewhat leery of that aspect.

Our third point regards section 33(7) of the act, which would allow the court to continue a co decision-making process after a guardian has been appointed. This, in our view, could lead to significant delays in a decision-making process when there is an overlap between the areas of responsibility between the guardian and the co decision-maker or a lack of clarity in the order ascribing the roles of the two individuals. Who would have overall authority? How would arbitration be done when there is a disagreement between these two individuals? Our suggestion would be that overall authority be clarified in such instances or that the co decision-making authority be dropped when a guardian is appointed.

Our fourth point is with regard to assessment of capacity. Physicians are concerned that the scope for performing capacity assessments will potentially be expanded beyond physicians and psychologists. We feel strongly that other professions do not have the training or skills to properly complete a full assessment of patient capacity. Such an individual will need to have the skills, training, and expertise for examination, diagnosis, investigation, and treatment of individuals in order to come to the correct conclusion and rule out treatable or temporary causes of incapacity. Many physicians, for this reason, do not undertake capacity assessments, because they feel that they are lacking somewhat in those skills. They refer them to their colleagues who they feel have the expertise and the experience in order to perform such capacity assessments. As someone who spent many years in practice, coming to a working diagnosis and ruling out potentially treatable causes or temporary causes of incapacity is a difficult process, and it requires someone who has those skills.

11:20

Our fifth point is that physicians strongly advocate for the development of a defined standard for capacity and the process for determining it. We feel that this should be developed in consultation with physicians appointed by the Alberta Medical Association and the College of Physicians and Surgeons of Alberta. Each individual who is subject to a capacity assessment deserves to be judged by the same standard with a standardized process that is determined by current best practice derived through a thorough, evidence-based review of the literature. Naturally, the standard would require regular review and revision as medical evidence progresses and new techniques for capacity measurement become available.

This constitutes my representation on the Adult Guardianship and Trusteeship Act. I would be happy to respond to any questions that the members of the committee may have.

The Chair: Thank you very much, Dr. Mittelsteadt.

Ms Pastoor.

Ms Pastoor: Thank you very much, Mr. Chair and doctor. Regarding your point 4 as a geriatric specialist RN with 16 years' experience would you not consider RN practitioners and certainly registered psychiatric nurses to be qualified to make that decision? I agree with you in that I don't think it should go beyond, but I would like to have the discussion about having nurses, particularly with experience.

Dr. Mittelsteadt: Well, specifically with nurses I guess that our concerns would be in the area of the ability to do a proper physical examination and assessment, the experience in differential diagnosis and experience in treatment, also investigation. Most investigations are ordered by physicians. Nurses don't necessarily have the background to provide that degree of overall management of patient care and investigation.

Ms Pastoor: Nurse practitioners?

Dr. Mittelsteadt: Nurse practitioners in most instances are acting under the supervision of physicians in some capacity. They do function very well in outlying areas providing care to patients. If they have specific training in assessment of capacity, perhaps, but I would suggest that the number of nurse practitioners who have that particular training and expertise and experience is very limited.

Ms Pastoor: Thank you.

The Chair: Other questions?

I'll ask a question if I may on your point 4. I guess it's on the same lines as the deputy chair was just asking. The AMA and other physician groups and individual physicians were involved last year in discussions around Bill 31, the Mental Health Amendment Act. In that bill under consideration was: which professions and under what circumstances should health professionals be able to determine the revocation or the continuance or the issuance of a community treatment order? As I recall – and I don't have the bill in front of me – there was some discussion about other health professionals, nonphysicians, having a role. An example might be in a remote area of the province where there simply isn't a physician available, those professionals having the opportunity to make that determination in consultation with a physician, or I guess in this case that might also be extended to a psychologist. Would that sort of option be more acceptable or supported to a greater extent by the AMA?

Dr. Mittelsteadt: You'll see that in our response to the regulations on Bill 31 we addressed that point specifically. I think we recognize that there are areas of the province where psychiatrists are not available, and our presentation on that particular issue was that there should be a hierarchy of choices in that. If there is not a psychiatrist available and a physician is available, then the physician should be appointed to supervise the clinical treatment order or to make that

decision. If neither of those is available, then someone who is a health professional who has the training and expertise should do so but only after consultation with a psychiatrist and only if the psychiatrist, after hearing the representation of that health professional, is in agreement with such an order being made.

The Chair: Thank you.

Any other questions? I'm going to ask one other if I might. In this case it might help to have some clarification from the department officials if it's needed. I was a little confused about the third point. The concern you've expressed here is if the court appoints a guardian while at the same time continuing a co decision-making process. I guess the question I would like to ask the department officials is: could that situation exist under the proposed bill, or is there a process to discontinue a co decision-making order once a guardian is appointed?

Ms Doyle: Thank you for the question. Brenda Lee Doyle from Seniors and Community Supports. The intent is that there will never be a situation where a co decision-maker and a guardian will have the same personal matters, so for health care you wouldn't have a co decision-maker and a guardian at the same time. There could be situations where there may be a person who has guardianship of health but there may be co decision-making around legal affairs. The intent was that the judge would clarify those powers, but in the legislation we were trying to make it very clear that there is only one person to go to. If it was a guardian on health care, you would just go to the guardian, so they wouldn't have the same personal matters.

Dr. Mittelsteadt: I think our concern in that area is that there is often overlapping of jurisdictions where a health matter might also concern a matter that has some relevancy to, perhaps, legal matters or financial matters. I think what we would like to see is someone appointed who has overall authority if there is an overlap in jurisdictions, or else just appoint a guardian and not have a co decision-maker.

The Chair: Thank you for clarifying that.

Anything further from any members of the committee?

Ms Pastoor: If I might, I'd just like to go a little further with something that you had brought up. Certainly, something that I ran across in my experience is when you get in the middle of the family fights.

Dr. Mittelsteadt: Yes.

Ms Pastoor: It can really be quite ugly. Nobody wins, and certainly the person that's supposed to be receiving the care is left sort of in limbo. Do you have any suggestions other than going to court? Then you end up with a divided family, and that can be even worse.

Dr. Mittelsteadt: Well, the short answer is no. I think anybody who has been in clinical practice – and I think Dr. Swann and Dr. Sherman can attest to that – particularly in emergency situations or end-of-life situations, my experience is that, first of all, personal directives are purposefully very vague. and it's almost impossible to anticipate all the nuances and implications of the different aspects of medical care to allow for that. So it often falls on family members to make those decisions in emergency situations or end-of-life situations, and they are difficult. I think most physicians and nurses will try, if there is a disagreement amongst the family, to inform the family, try to mediate those types of decisions, but there inevitably are times where there is significant disagreement between different family members. Then I really don't see much resource unless there is a court if you have time. Often you don't. I think physicians, as they are trained to do, have to make those decisions on the fly in such instances and do whatever they feel is in the best interests of the patients or that the patient would want under such circumstances.

11:30

Ms Pastoor: I think that one of the things that I am very happy with with this bill is the personal directive.

Dr. Mittelsteadt: Yes.

Ms Pastoor: I can only speak from personal experience on what my mother had done. She did have a personal directive and very clearly had someone outside of the family making those decisions because there are six of us, and I don't think she anticipated. You never know, as I'm sure the doctors in the room as well know, that when it comes right down to the crunch, you can have some pretty nasty stuff. So I think that personal directives are going to help us a great deal through some of the problems that we have seen within our profession.

Dr. Mittelsteadt: I would agree.

The Chair: Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. Thank you, Dr. Mittelsteadt. I guess as someone who still makes decisions on mental capacity on the front lines, I'd just like to comment on some of your points. Number one, you're absolutely correct. The worst-case scenario incidents are where there is a very vague personal directive, and then you get three family members that show up with a different lawyer, leading to a very difficult, uncomfortable situation. That is a reality. Many of the times any personal directives that we currently have are so vague that it ends up being a discussion with different family members who have differing views on how to treat their family member. There does need to be somebody who has overall authority over the patient care, and at times the health care provider in the front, whether it be a nurse practitioner in a rural area or the physician, is caught in the middle. I think we as policy-makers need to have clear policy as to who's responsible, which means we need to define a process as to how we find the right person to be responsible.

With respect to point 4 many of the physicians themselves, many of our colleagues, aren't comfortable with or aren't qualified to determine mental capacity. Many times it's done in a collaborative team approach. I do appreciate Ms Pastoor's comments. In a rural area decisions need to be made. There is no physician. There is a nurse practitioner. I do believe that it's important that we have a hierarchy of health care providers that can make the decision. In the absence of a physician then somebody else has to be there.

These are very important points. I thank you so much for your input, and hopefully we as policy-makers will take your input.

Dr. Mittelsteadt: Thank you.

Ms Pastoor: I'm sorry. I'm just going to make one other comment that perhaps I would ask for your comment on. One of the things that I've been advocating is that because I come out of the geriatric side of it, people often suspect: well, maybe I'll do my personal directive when I do my will. What I'm advocating is that people make personal directives when they're 18, the minute they become

an adult. The physicians in the room, I'm sure, are aware that there are a great many motor vehicle accidents, and we've got a lot of brain damage. Where do these young people go? In fact, sometimes end-of-life decisions have to be made as well. That's one of the things I'm advocating. I think I would just like your comment on that.

Dr. Mittelsteadt: Well, I think physicians would welcome that, but like wills making one early is a good idea, but updating it regularly is the other aspect of that. I think one of my fears would be that someone has a personal directive where they state specific points and then change their mind about it and don't change their personal directive. Then the guardian or whoever is looking after that person's affairs is bound by that even though they may know that that individual has subsequently changed their mind about those particular issues.

The Chair: Mr. Olson, followed by Ms Notley.

Mr. Olson: Well, thank you. Just a couple of comments following the recent comments. I also agree that people should do their personal directives early. I would also say that they should do their wills early. Anybody who owns anything should have a will, and anybody who needs a will should have a personal directive and an enduring power of attorney.

I also agree about the review because one of the things right now: if you have a will and you subsequently marry – so, say, you're divorced and then you get married – you wipe out your will, but I don't think we have a similar rule when it comes to a personal directive or an enduring power of attorney. I take your point. You know, you're married. You get divorced. You had a personal directive which said that you wanted to pull the plug, but it's now your ex-spouse who is in charge of making that decision. So, you know, I think those are very valid points.

My question relates to your point 5 about the defined standard for capacity. I agree with the principle. I'm just a little concerned about how that would be developed and how there would be kind of a common understanding of what that is. I think the devil could be in the details. I'm just curious to know whether or not you have some sort of standard in mind.

Dr. Mittelsteadt: Well, that's not my area of expertise, but in talking to the geriatricians, they do feel that that is something we can do. Simply put, we want everybody to be judged by the same test, and we want it to be the best test that's available at the time. I think that there is a lot of merit in that. I think that the physicians who do these kinds of capacity assessments feel that to develop such a standard is something we can do with government working in conjunction with physicians. It can and should be done. Sorry. For a while there I was thinking that maybe you were thinking that marriage was taking away someone's will to live or something like that.

The Chair: Just in case you haven't figured it out, in addition to two doctors we have three lawyers on the committee, so I'll turn it over to Ms Notley.

Ms Notley: Yeah. I just wanted to go back to your submission really quickly. You touched on it, your second point where you noted that having the health care providers select the decision-maker could put them into a very awkward position. You sort of touched on it, but I'm just wondering. I mean, does your organization have a proposal for how that could be dealt with, the apparent discomfort that your submission discloses about the role of the doctor in that? Would you rather not see it in there? Would you like it circumscribed in some way with more clarity or the criteria to give less discretion to the doctors? Is there a position?

Dr. Mittelsteadt: Well, I don't think that we've taken a specific position on it, but I think that reflects our concern that that is there. Therefore, in the event of two separately entrenched sides of a family coming forward, someone might come forward and say: "You know, you have to make a decision. You have to select who's right." I think in that case physicians would be happier if that wasn't there. Again, I think in the vast majority of instances, these are things that physicians can mediate with family, but there certainly are many instances where they're not able to.

Ms Notley: Thank you.

The Chair: Any other questions? If not, Dr. Mittelsteadt, I'll thank you again very much on behalf of the committee, and thanks to the AMA for preparing the response. It was a great pleasure to have you.

Dr. Mittelsteadt: Thank you to the committee, and I appreciate your time.

The Chair: Ladies and gentlemen, we have lunch scheduled until 12:30, commencing at roughly 11:45. I've just been asked to remind you that we're actually sharing the lunch that's outside with the other committee in session in the other committee room. We'll convene here again right at 12:30.

[The committee adjourned from 11:40 a.m. to 12:31 p.m.]

The Chair: Good afternoon. I'll call the committee back to order. We're continuing with oral presentations on Bill 24. I would like to welcome Suzanne Michaud and Mr. Tom Grozinger from the Royal Bank of Canada.

Good afternoon, Ms Michaud. Can you hear us?

Ms Michaud: Yes, I can, and thank you for the opportunity to speak.

The Chair: Well, thank you very much, and on behalf of the committee thank you to the Royal Bank for your submission on our bill and for your contribution to the review through the written submission and today's meeting.

Mr. Grozinger, are you on the line as well?

Mr. Grozinger: Yes, I am.

The Chair: Okay. Very good.

My name is Fred Horne. I'm the committee chair. Before we get started, I'm just going to ask the members of the committee who are here to introduce themselves to you. We'll begin with the deputy chair.

Ms Pastoor: Hi. Bridget Pastoor, MLA, Lethbridge-East.

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

Dr. Swann: Good afternoon. David Swann from Calgary-Mountain View.

Ms Notley: Good afternoon. Rachel Notley from Edmonton-Strathcona.

Dr. Sherman: Good afternoon. Raj Sherman, Edmonton-Meadowlark.

Mr. Olson: Hi. Verlyn Olson, Wetaskiwin-Camrose.

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

Mr. Vandermeer: Good afternoon. Tony Vandermeer from Edmonton-Beverly-Clareview.

Mr. Quest: Hi. Dave Quest, MLA, Strathcona.

The Chair: We have approximately 30 minutes, and you'll know from the arrangements that were made beforehand that we'd like to divide this with up to 15 minutes for your presentation and then about 15 minutes for members to ask some specific questions. The clerk, who is seated to my right, will give you a warning when there are about five minutes remaining in the 15-minute allotment. This is just our way of trying to make sure that we get everything in within the 30 minutes. So when you see that, if you could sort of begin summarizing, then we'll move on to the question period. Please go ahead.

Royal Bank of Canada

Ms Michaud: All right. I'd like to proceed, and we'll try to keep things at a fairly high level. It's a complicated topic. My area is estates, trusts, and incapacity, and I'm part of the RBC national law group. I support a number of the RBC businesses in that area. Tom Grozinger is a principal trust specialist with the Canadian trust company operations, located in Ottawa. We both had input into the letter that we delivered to you as our submission on August 22. I hope you have it in your materials because we'll refer to it from time to time.

Just by way of background, RBC is a large Canadian bank with many affiliated companies and subsidiaries, as you know, including two Canadian trust companies. It has a wide variety of financial products and services which are offered to Albertans through various RBC companies, and it's similar in structure to a lot of the big Canadian banks. Although we're making the comments for RBC, you may find that the comments have wider application. Because RBC deals in financial products, we're going to primarily restrict our comments to the aspects of the new act dealing with trusteeship.

Our review of the legislation this summer, with vacations and everything else, unfortunately – we apologize – was a bit cursory. If we have time here, we may make one or two points that aren't in the letter, but if you wish to have them in writing from us or ask us any other questions after our time slot, we're happy to make ourselves available.

When we look at draft legislation – and we're always happy to be invited to comment – we try to look at it from the point of view of clarity in terms of us being able to implement any new changes to the law because that, obviously, reduces uncertainty for the clients that we deal with in these types of situations and, you know, makes just the day-to-day dealings quicker and more certain. So we are trying to focus on that clarity aspect.

The first provision that we're going to touch on is section 54 and make a comment as well on 58, and I'm going to turn that part over to Tom just to give a little bit of context for our comment in the letter.

Mr. Grozinger: Thank you very much. As you may be aware, with the letter that was sent on August 22 regarding the section 54 comment, we had suggested that it would be beneficial if the legislation included some provision to permit deposit of a represented adult person's assets or cash either within a corporate trustee's institution or in a related or affiliated party's institution. To explain that and by way of background, to the extent that a trusteeship in the context of the proposed Adult Guardianship and Trusteeship Act is considered a trust and thereby subject to trust principles or is otherwise considered a fiduciary relationship, there is what is known as a common-law duty of loyalty to which trustees are subject.

What does that mean? In a nutshell, this duty generally prohibits trustees from acting in a manner that puts their interests above those for whom they are acting unless the trust instrument permits it. Therefore, although a particular activity can be said to benefit the trust or its beneficiaries, if the activity may be perceived to also benefit directly or indirectly the trustee, then the trustee may be precluded from pursuing that activity in favour of an action that really in overall terms may be less desirable for the trust as a whole given that strict principle of the duty of loyalty.

In the context of depositing assets of a represented person, there's a clear benefit, in our submission, for a corporate trustee to be able to deposit such assets with themselves or with affiliated institutions, notwithstanding the application of usual account fees. Now, that benefit is that the administration is going to be facilitated given the familiarity of the institutions with each other, which, of course, is advantageous to the represented person and his or her estate.

The reality is that fees would also be incurred if, for example, the trustee was forced to deposit such assets in a competitor institution. Where a corporate trustee is owned by a bank, such as the RBC Trust Company is by RBC, it is likely that the average citizen would expect that such assets will remain with the particular financial group, and we think it's unreasonable to expect or require corporate trustees to deposit such assets with competitors only because of a strict adherence to this age-old legal rule. It was for that reason that we submitted that the draft legislation should expressly permit a corporate trustee to deposit assets of a represented adult with itself or affiliated parties as long, again, as the usual market terms apply to such deposits or accounts.

That's it for me on that submission.

Ms Michaud: My point is a little bit on the other aspect, and that's with the provision for permission being given in a court order for there to be a bank account opened by a represented adult. This is, I know, a difficult issue, and I am part of a working group with public guardians and trustees. I know it's important for represented adults who have, perhaps, diminished capacity but are still living and functioning in society to have access to funds for their day-to-day living. I'm very sympathetic to that, and I think this legislation is very positive in that it recognizes that oftentimes a deposit account is a useful facility for the represented adult to have access to cash as opposed to having to go to the trustee to receive cash in hand. The difficulty is that section 58 speaks to the protection from liability for the trustee for the operation of these types of accounts, which is commendable, but it's silent on the bank's operation of these types of accounts.

The difficulty, then, is that if this type of account is opened up at a bank, the bank is then taking instructions from a client who has been found to have diminished capacity or to be incapable of managing property, and there is a larger potential for misuse of the account. We've seen situations where there is misuse of bank cards, overdrafts, third-party interference in the account. There are actually third parties taking advantage of a represented adult. Even, one could contemplate, it might be an opportunity for money laundering.

Our request would be an amendment in the legislation that might offer similar protection to a bank for operating the deposit account that is being offered to the trustee and a reimbursement of the bank by the trustee for any losses suffered by it for the operation of such an account.

12:40

I want to move on to the next section, section 55, because I'm very aware of the limitation on our time. In our further review of the legislation we realized that you did properly address that a trustee should not have the ability to change the will of the represented adult in section 84, but there are a couple of other estate planning techniques that are commonly used that aren't addressed in this legislation, and it's an area of uncertainty in the law. We know that many times RBC, the various businesses, are approached by a representative of a person, whether they're holding power of attorney or they're the guardian of property, to either make accounts joint with right of survivorship or, the more thorny issue, to designate beneficiaries on registered plans.

The designation of beneficiaries on registered plans has actually been the subject of a court case in B.C. that was decided by the British Columbia Court of Appeal regarding the designation by a power of attorney. It's a complicated issue. I don't want to, you know, spend too much time with you. The B.C. government has looked to address that in their amendments to the Adult Guardianship Act in section 17(4).

We would like you to consider perhaps including expanded direction in this legislation for dealing with those two types, either to clearly say that it's prohibited or that it is permitted in certain situations, because there are certain situations where it could be useful both in carrying out the intention of the represented adult and being in keeping with the expectations of the family.

Tom, I'll turn it over to you for the comment on section 59.

Mr. Grozinger: Okay. Thank you very much. As with the deposit of assets issue the concept of duty of loyalty and that avoidance of a conflict of interest that I mentioned earlier also arise in the context of investments as well as the delegation of a trustee's investment authority. As with the discussion on the deposit issue, in the context of the modern-day reality of bank-owned trust companies, again a strict adherence to the rule when it comes to investments may prove disadvantageous to citizens.

What do I mean by that? Look at it in basically two points. Firstly, funds that someone may want to invest in, such as mutual or pooled funds that are issued by a corporate trustee or an affiliated party such as a bank, may well be an appropriate selection for the investment of the assets of a represented person. Similarly, the securities of an affiliated bank may also be considered by the corporate trustee as an excellent choice, you know, to make up the investment portfolio of that represented person. Now, given that the draft legislation imports the prudent investor standard of Alberta's Trustee Act, which I think is a really good thing, a trustee really cannot invest without considering several criteria, in any event, so protections are already built in when it comes to investing even in the securities or the product offerings of, let's say, an affiliated party. Now, undoubtedly, it seems to me that citizens would probably be frustrated in their expectations if their property cannot be invested in what generally would be considered prudent investment simply because their property is managed by an affiliated trust company.

Secondly, again as permitted by the draft legislation, a trustee may delegate its investment responsibility to an external manager. However, if the external manager – and let's say it's one who is not affiliated with the trust company – determines independently that it is prudent and wise to invest in the securities or the product offerings of an affiliated institution, should that investment manager be precluded from doing so simply because of a technical legal rule of the duty of loyalty and conflict of interest? It seems to me it might be frustrating for the represented adult to know that while all the other clients' external investment managers are benefiting from such investments, they are precluded from so benefiting because the draft legislation did not expressly permit such investment.

It's for the above reasons that we submit there should be clear, express provisions in the proposed legislation permitting a corporate trustee to make investments in the pooled or mutual funds offered by it or by an affiliated party as well as making investments in the securities of the affiliated party and, similarly, that any appointed external investment manager could likewise do the same.

A point that we didn't raise in our submissions, again, as Suzanne said, because of timing, involves the concept of subdelegation. Again, this is a little bit complicated. Subdelegation really is just a situation where a trustee delegates a power to another, and then that delegatee in turn delegates that power to a third person.

Mrs. Sawchuk: You've got your five minutes now.

The Chair: Excuse me, Mr. Grozinger. Sorry to interrupt. We've got probably just a few minutes to wrap up the oral presentation. I just want to make sure that the committee members have an opportunity to ask some questions, probably some including clarity questions. If you could sort of move to wrap this portion up, perhaps we could pick up some of the remaining issues in the ensuing discussion.

Mr. Grozinger: Okay. Well, again, with that subdelegation it seems that it would be beneficial if there was a provision permitting that.

I think what we'll do, then, in light of the timing, is we'll skip over 64 because I think that's fairly self-explanatory. Sixty-six, again, regarding pretaking, is probably self-explanatory. Just so that the committee members know, arguably with regard to trustee situations there is some uncertainty in the jurisprudence, at least in Ontario, as to whether pretaking is permitted. However, the Ontario Substitute Decisions Act, 1992 legislation, in the context of court-appointed guardians of property does permit taking of compensation without having to go to court. There are several reasons, some of which we cite in our written submissions, as to why that would be beneficial. Again, we sort of repeat that notion that it would be of great benefit, we feel, if that were included in the draft legislation, not just for corporate trustees but actually for individual lay trustees as well.

An additional point. In 66(7) it refers to a trustee being entitled to be reimbursed for expenses and disbursements. We weren't certain if that meant that the trustee had to incur the expenses first and then go and ask for reimbursement or whether it was intended that the trustee could actually go directly to the trust property. If it is the latter, then we would submit that it might be a good idea if that were expressly made clear in the legislation so that a trustee wouldn't have to dip into its own pockets first for paying those disbursements.

I guess that's probably it for me. I'll turn it back over to Suzanne, then, for any other comments.

Ms Michaud: I had three more sections to comment on, but what I'll do is I'll just make the one comment which I think might be the most interesting for your committee and leave it with you and open

the floor to questions. Then if we have time at the end, I'll make the other two brief comments.

I just wanted to draw the committee's attention to the provisions of section 56(3). This is probably being raised more in the context of myself as a mother as opposed to an RBC employee, but it says that

> subject to subsection (2), a trustee may exercise the trustee's authority for the benefit of any or all of the following . . .
>
> (c) any child of the represented adult who is 18 . . . or older and is unable to earn a livelihood because of a physical or mental disability.

That is fine, but I think of myself as a mother of a 17-year-old who is about to head off to university next year, and if I became a represented adult under this legislation, 18 next year when my son is in university, there's no automatic authority in the trustee to pay for my son's expenses, care, unless it was expressly permitted by the court. In fact, because the RESPs that my husband and I have saved for the purpose of his education are technically legally owned by us, there may even be an issue with accessing the funds in those RESPs to pay for my son's education.

I would just suggest that it may be worth while to broaden the scope of the trustee's power in this regard because it's not unheard of that there are adults later in age having younger children. These would be children who technically could be 18, of the age of majority, but not quite ready to strike out on their own in terms of earning a livelihood, and the intention of the whole, you know, family unit was, in fact, that they be supported through university until they are able to earn a decent living.

I will close with that and happily invite your comments.

The Chair: Okay. Thank you very much.

We'll open it, then, to questions from committee members.

Dr. Swann: Thank you very much for those very helpful variables to deal with in this complex legislation. Under section 59, the duty of loyalty and the avoidance of conflict of interest, it's not clear to me why we can't and why a company like RBC couldn't ensure that a person quite separate and disconnected from RBC couldn't as an objective portfolio manager strictly look at the investments of a particular individual. That would make it quite clear that there was no conflict of interest. Perhaps that's what you mean by delegation and then subdelegation, that you would ensure that the individual actually making decisions about the investment on behalf of this dependent individual would be entirely independent of any benefit to the company that was already engaged as a guardian so that there is a clear and separate line between the trustee's role in a fiduciary capacity relative to their own benefit from the investments.

12:50

Mr. Grozinger: It's Tom here. Dr. Swann, I think that's exactly what most individuals, most Canadians would probably presume to be the case, which is why this is such a fantastic opportunity, I think, to ensure that it's actually enshrined, so to speak, in legislation to make it clear that it isn't a concern for a trustee such as a corporate trustee to do exactly what I think you're saying, which is that if they consider an investment such as – I don't know – an RBC mutual fund given its performance, given the relative prudency of investing in it, to put that into such a person's portfolio, there would be nothing that would say, "No, you can't do that" simply because there's some sort of a technical issue with the law, which is what we sometimes have to wrestle with.

Admittedly, if certain provisions went into, you know, court orders and such that would ensure that not to be a problem, then I think that that would be permissible, but for obvious reasons having it already in the legislation as part of the powers that a corporate trustee can do would certainly, I think, facilitate the whole concept of administering such property for represented adults by corporate trustees.

Ms Michaud: Maybe just to restate it for clarity again, when RBC has opportunity to have input into a draft of a court order, a draft of a trust agreement, et cetera, it makes certain that these provisions and powers and flexibilities are carefully spelled out in that document. In a situation like this, where they wouldn't necessarily have the opportunity to review the appointment but might consent, in any event, to being appointed, the difficulty is that the full flexibility and the whole range of investment products may not be available to the represented adult because of these common-law principles.

The other issue that we hit fairly often in the investment business is that many of the trustee acts have this ability to delegate the authority, as Tom spoke of before. I'm not an investment or securities lawyer. As mentioned, I am a trust lawyer, an estate lawyer, but right now with large amounts of money to be invested, there are fairly sophisticated recommendations. There's often an independent investment manager who has several portfolio managers, and this is the subdelegation. It means that oftentimes a legal representative acting for a represented adult or an incapable person does not have the ability to subdelegate so cannot go into this more sophisticated investment advice arrangement, and it's a shame because oftentimes the individual trustees as well do not feel comfortable either making investment decisions themselves or would prefer to have access to this range of services.

Dr. Swann: Thank you.

The Chair: Thank you very much.

Other questions? Mr. Dallas.

Mr. Dallas: Thank you, Mr. Chair. I'm struggling with the logic of the proposed changes, not in the context of convenience but in the sense of the security of the dependent adult being the primary concern. Given that there are a variety of firms engaged in this type of business and the net result is that business from other firms would be placed with your group – I'm assuming that you offer a very competitive suite of products that would be attractive – and given that you place away some business, I'm not sure where the net benefit corporately is for what I'm sure is a very small margin of potential for misuse of the due diligence that the trustee must provide but nonetheless an important part of the protection for that dependent adult. Can you elaborate on how the firms would benefit financially from these changes?

Ms Michaud: Maybe I'll make the first comment on that, Tom, and then you can think about it and make any further comment.

Mr. Grozinger: Perfect.

Ms Michaud: I think what Tom had originally mentioned and what maybe I will reinforce is that the expectation, I would think, oftentimes of a person who later, unfortunately, lost capacity would be that if there was a corporate trustee involved from one of the major Canadian corporations, banks and other subsidiaries, they would tend to deal in the financial group of companies. There's some benefit, actually, to the client for that in the sense that there's oftentimes speed of transacting in one group as opposed to going outside to a third-party group. Secondly, the benefit to the client would be that there are often attractive institutional rates offered, so

there might be actually some net savings as opposed to having to go outside to a third-party investment company or a third-party bank for deposit.

The common-law rules have been there for hundreds of years. They were developed in situations – perhaps even the trust companies were privately owned, and there was a real concern that perhaps there wasn't due diligence and that there was greater chance for conflict of interest. We're just trying to say that the financial industry has certainly grown and changed and become much more complex and perhaps much more highly regulated and that these changes might be to the benefit of not only the Canadian banks but also, in fact, the clients themselves.

Tom, did you want to elaborate?

Mr. Grozinger: Yeah. I mean, I don't actually have too much more to add to that. Certainly, in the context of, for example, testamentary trusts or inter vivos trusts we do run into situations where a testator may have used an affiliated party investment firm, and the beneficiaries of a trust, let's say, that gets created says: "Well, wait a minute. Why can you not continue to use that investment adviser that my deceased parent had utilized? I know he would have wanted that to take place, so why don't you do it? You have the power to delegate under the prudent investor rules." That's where we're then faced with that issue of: well, yes, but now does it become a conflict because of this delegation to the related party? Although there may be ways to work things out, of course, it would be so much more simple and give much more assurance if, in fact, the legislation said that as long as you're exercising prudence in the delegation, in the monitoring, if it makes sense under the, again, various factors and criteria that are enshrined within the prudent investor legislation, it would be okay to do so.

Those are really, I think, the reasons for these submissions on that point.

The Chair: Okay. Thank you very much.

Mr. Olson.

Mr. Olson: Thank you. I have similar concerns to those expressed by my colleague. I won't go over them again, but I do have a quick question just about what other jurisdictions are doing. Can you point to other jurisdictions that have done something with this common-law duty of loyalty to kind of soften it and do what you're suggesting here?

Mr. Grozinger: I'm trying to think now. I know that there are definitely some other provinces that are looking at reforming some of their legislation. I know that certainly in the context of the pretaking there are definitely proposals put forth. I'm thinking of the British Columbia one as an example. In terms of the delegation and the use of related parties I think the thing is that they're still also in the early working, so to speak, trying to present draft legislation. So, of course, to the extent that we again have the opportunity to make submissions on that, we have and will.

Ms Michaud: I think that the trend over time, if you don't mind me interjecting, is that we had some case law, for instance, that said that a trustee could not buy a mutual fund because that was a delegation of authority. That was in most of the provinces in the days before they amended their trustee acts to expressly allow delegation. That was an example of the fact that the legislation at the time did not reflect the current circumstances of the financial industry. Over time the provinces did one of two things. They either specifically changed the trustee act to allow for delegation of the investment power – so to the extent that a mutual fund was a delegation of investment power, it was fine – or in a number of the jurisdictions they have expressly said that you can delegate your investment power and, by the way, a mutual fund is not considered a delegation. Basically, it would be considered a stand-alone investment considered on its own merits, giving again the trustee, who has got the big responsibility of managing somebody else's property and doing it to the best of their ability and honestly, more flexibility in, you know, how they invest to the benefit of that other person.

So I think it's a question of the changes in the products and services perhaps moving a little bit faster than the changes to the legislation.

1:00

Mr. Grozinger: I know I'm also aware of a decision outside of Canada where that issue around using a related party's investment manager was considered and was accepted by the court in that case as being appropriate. I think, as Suzanne said, it is the fact that things move so quickly in the financial world that it's maybe taking legislation a bit of time to catch up with it.

The Chair: Okay. Are there any further questions?

With that, I'd like to thank you both again for appearing before the committee today. I noted that there were a few points you mentioned that weren't included in the written brief. If you would like to provide any sort of written elaboration on those points, please feel free to send them to the committee clerk, and they'll make their way to the committee, particularly the point you made on 56(3)(c) at the very end. It might be useful to the members to have a brief written explanation on those points.

Thank you very much again.

Ms Michaud: Thank you for the opportunity.

Mr. Grozinger: Yes. Thank you very much.

The Chair: Our next presenter is Ms Barbara Kimmitt from Bennett Jones LLP in Calgary. Ms Kimmitt, good afternoon, and thank you very much for your written submission and for coming today to speak with the committee.

Before we start, I'd just like to go around the table and introduce you to the members of the committee. We'll begin with the deputy chair.

Ms Pastoor: Hi. Bridget Pastoor, MLA, Lethbridge-East.

Mr. Quest: Dave Quest, MLA, Strathcona.

Mr. Vandermeer: Tony Vandermeer, MLA for Edmonton-Beverly-Clareview. I apologize; I'll have to leave for another meeting at 1:30.

Mr. Dallas: Cal Dallas, MLA for Red Deer-South. Good afternoon.

Mr. Olson: Hi. Verlyn Olson, Wetaskiwin-Camrose.

Dr. Sherman: Hello. Raj Sherman, Edmonton-Meadowlark.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

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

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

The Chair: I'm Fred Horne. I'm the MLA for Edmonton-Rutherford.

Just before you start, we've allotted about 30 minutes, and what we're trying to do is divide that with up to 15 minutes for a presentation and then leave the balance of the time for members to ask questions and engage in a bit of dialogue with you. So to help facilitate that, when there are about five minutes remaining in the presentation portion, the clerk will wave a little sign just to give you a bit of a heads-up that there are about five minutes remaining in the portion. Okay?

Bennett Jones LLP

Ms Kimmitt: Sure. I don't know that I have a very lengthy presentation. A lot of my points are covered in the letter that I provided to Terry Gilholme, who is the chair of the wills and trust section of the Bar Association down in Calgary. She sent out a request for comments from members of that particular group, comments with respect to the proposed bill, and I got together with the members of our estate group at Bennett Jones in Calgary and went through the bill and provided our letter.

I think I'd like to start just by recognizing the merits behind amendments to the dependent adults legislation that would support the autonomy of adults in need of assistance and various levels of representation. However, that said, I would say that in my experience the vast majority of adults in need of assistance are not abuse situations. The vast majority of these situations are people who have family members who already have very busy schedules and actually need a very streamlined procedure to assist their family member. So my concern with a lot of the revisions in the proposed legislation is that it is a little bit imbalanced in terms of worrying about protective measures for people in need of representation or adults in need of representation as opposed to turning its mind to: how do we make things easier for the citizens of Alberta to continue to care for their family members?

Just to give you some perspective of who our clients are, I spoke with some other colleagues in preparation, and some of these lawyers do dependent adults work as a very big part of their practice. They all agreed with what I said, which is that most of the applications for guardianship and trusteeship under the existing legislation are where you have a child who maybe has some sort of a mental disorder or autism or something like that, and they're going to be turning 18. Lots of times there are different levels of functionality, but mom and dad have always been very supportive. This child lives with mom and dad and probably will well into their adulthood. The only thing that really has changed in the whole structure is the fact that this child is going to be turning 18. Other than that, everything else is the same. Here are parents who have been very supportive and actually are really just looking to the law to support them in continuing that support for their family member. So I have concerns that this proposed legislation is potentially unduly cumbersome for those types of people.

The other type of person who we usually see as needing representation is an elderly person who is losing capacity through various forms of dementia and just the onslaught of old age. Again, this is where you find people making applications. These are the people in the sandwich generation. They're busy looking after their children on the one hand and then also good enough and responsible enough to be wanting to look after the welfare of their aging parent. I again would say that that's the vast majority of our clients on these applications. These are not situations where you've got, particularly on the guardianship side, somebody who's going to go to the bother of a court application to be appointed a guardian and then abuse their parent. In most cases the abuse, in my opinion, would occur with those people who would never even make the application in the first place.

From my perspective I think there are a few things that could be pared down. Just as an indicator I would point out that in this bill there are twice as many definitions as in the existing legislation. I know that doesn't mean anything in and of itself, but it is an indicator of increased complexity.

I have most of my concerns with respect to the proposed guardianship changes. Most of the trusteeship changes I think are great. In my letter that I sent to Ms Gilholme, that I think was referred to the committee, I summarized my understanding that the proposed legislation would outline three tiers of guardianship: one, a supported decision-maker; two, a co decision-maker; and thirdly, a guardian. As you probably all now know, currently the only thing that there can be is either a guardian or no guardian. There are powers in the legislation, and it's expected that the court would choose the appropriate powers to the guardian depending on the needs of the dependent adult in question or the represented adult.

These new provisions are talking about three tiers of guardianship. I understand what the motivation would be there. That's probably an attempt to streamline the process for families, and it's probably looking towards the current structure with trusteeships, where you can have a small "t" trustee where the dependent adult is only receiving, for example, AISH payments. You don't have to – in fact, you can't – make an application to the court for trusteeship in that case. I imagine that that is what's trying to be achieved with these guardianship provisions.

1:10

However, with the supported decision-making this is a situation where it's proposed that an adult can actually sign a prescribed form saying: so-and-so can help me with decisions. It's probably harmless having it in the legislation, but I submit that it wouldn't be widely used. I think in those cases where a dependent adult has the ability to say, "This person can help me with my such-and-such decisions," they're not going to sign a prescribed form. They're going to bring their mother with them to the doctor's appointment. I sort of think that these supported decision-making provisions might be obsolete or just not effective. But as I've mentioned in the letter, because I think they're harmless, I don't have any serious objection to having them retained in the legislation; I just don't think they'd be well used.

That would leave us with the other two tiers, which are co decision-making and guardianship. My concern here is that it will be cumbersome for legal advisers, for members of the public, for the courts to be explaining to these family members what exactly is the procedure: "Well, you're either a co decision-maker or you're a guardian." "Well, what's the difference?" "Well, it's if you have this level of functionality or this significant impairment or whatever." I just think that that's going to be difficult to explain in a clear fashion.

Again, given that my mantra is simplicity here, I would actually prefer to see just a guardianship-type application and possibly looking at the powers that a guardian could have – that's the current section 10, and I think under the bill it's section 17 – just making sure that those powers that a court can give to a guardian are, you know, separate or succinct enough so that the autonomy of the individual continues to be properly preserved.

On that note, again, when I speak with my colleagues, in the majority of guardianship applications where the lawyers are applying for orders that are tailored based on those section 10 powers, which will now be the section 17 powers, I understand, they're requesting

all of the powers for good reason anyway. I still think that a guardianship application probably is enough. I don't think you need to have several tiers, for the reasons I've already mentioned.

I think, too, that just as part of that, you know, on a practical note this area of the law is not securities practice. It's not an area of the law where you're attracting a lot of practitioners. This is an area of the law where the same people are covering the very important social-legal issues, and they're not being compensated properly already for the work that they do. I think that if the legislation is made even more complex, then you're going to force people away from this area of practice. I think the public need legal advisers to assist them in this process. That's just sort of a practical consideration.

Just stemming from that, I notice that a lot of the requirements of the bill are left to regulation. I understand why that would be, but my concern there, just to give you an example, is some of the things that I noted are going to be left to regulation: what sort of documentation would be filed in a guardianship or a trusteeship application, how a trustee can charge compensation, service requirements, and then various definitions such as what significantly impaired means. All of these things are going to be prescribed by regulation.

As a legal adviser that means that I don't just look at my legislation; I always have to be searching my regulations. If regulations are passed from time to time, I might have this very lengthy piece of legislation as well as several regulations from time to time. That just makes it a little bit more cumbersome for the legal adviser. Given that you've asked for comments from the bar, those would be my comments from a legal perspective.

I just want to end on one point because obviously there's lots to talk about with this legislation. First, on a positive note, I really do embrace a lot of the provisions under the trusteeship amendments, particularly the bit where a person out of province can be appointed trustee and a possibility that that out-of-province person post a bond. I see this lots of times with families where the mom is living here in Alberta and children are living out of province. They can be appointed the guardian, but they can't be appointed the trustee. I do understand the reasons for that and explain it to them. However, I think the bonding requirement works in estate administrations, and it would work just fine for dependent adults, so I really do applaud that change.

One change I'd like to see is with respect to compensation to guardians, and you're going to get a bigger understanding of my social bent here. I've mentioned in my letter that I think that in our society – you don't hear a lawyer say this very often, I know – the jobs that matter don't get paid, and that would include parenting and guardianship. I don't think it makes any sense at all that somebody who's looking after somebody's money should somehow be a lesser risk of abuse than a person who is actually doing the day-to-day trench work. I think that if you're a guardian, you should be entitled to be compensated.

On a practical note with that, I have seen situations where a family member is more than willing to care for mom or dad but has to work, so they can't care for mom or dad because they have to go to work. Isn't it a crazy situation where they have to go to work so that a third party will take care of mom or dad and the system is paying for that? We've got a shortage of labour. We've got a paucity of care providers. I just think that, surely, if we can provide a fee schedule for trustee compensation, we should be able to do that for guardians as well.

Those would be my submissions.

The Chair: Thank you very much. I'm sure there are some questions for you. Ms Pastoor, did you have a question?

Ms Pastoor: No.

The Chair: Okay. I'll ask a question. I wanted to go back to your comments about the rationale for not having a co decision-maker. It was very useful for me to hear from a legal perspective, from a practical perspective in the law why it might be problematic. I guess what I'm wondering is: if you take the route that you're suggesting, which is to rely on the court to limit the powers in the guardianship order, how, then, do you sort of enshrine or protect in legislation the opportunity for the dependent adult to actually take an active role in the decision-making? Would it not simply, then, be up to, for lack of a better term, the goodwill or the good faith of the guardian to provide the person that opportunity? As I understand your submission, it would not be protected. That opportunity would not be enshrined in the law.

Ms Kimmitt: I think it is enshrined, particularly with the principles set forth in this bill that very much embrace the autonomy of the individual. I think that already the courts, when I go before the judges, are very much preserving the autonomy of the individual, a lot of them having family members themselves who are in need of support. For example, when I spoke with one of my colleagues who does a lot dependent adults work, she told me that in every single application she absolutely tailors her order depending on what the needs of that dependent adult are. We already have a functional assessment which would set out in fairly good detail what the needs of the proposed dependent adult are.

That said, there's no law that can actually dictate how a relationship is going to go. You can have an order saying that a guardian is supposed to always defer to the dependent adult. It's the same thing with a personal directive and an agent although with a personal directive and an agent the individual giving it has been able to take the relationship into account whereas in this case there's no planning in advance.

What I'm trying to get at is that if you have the eldest sister who is the guardian for mom and she's got a very, you know, take-charge personality, that's going to be the dynamic of that relationship. I don't think that the legislation or the court can really temper that.

The Chair: Okay. Thank you.

Ms Notley.

Ms Notley: Yeah. Just two questions and one comment, the first one just following up on the last line of conversation. I don't know if you can answer this or not, but do you think that the inclusion of the co decision-maker category would increase, decrease, or have no impact on the global number of orders that are given? For instance, right now we have guardianship, but if we had guardianship plus co decision-maker as opposed to guardianship with more tempering within it, do you see the courts potentially approaching the issue from a different way, or would there be any change in the numbers?

1:20

Ms Kimmitt: Well, if I understand the bill correctly, it's a court application to be a co decision-maker. The only time you don't have to make an application is if you are a supported decision-maker. That being the case, no, I don't think it will have any impact on the number of applications before the court. It will just mean that the practitioners have to decide whether this is appropriately a co decision-maker application or a guardianship application. I don't really know that it should be the practitioners who decide that.

Ms Notley: What I meant to ask is: do you think that the addition of

that extra category would change the number of approved applications by the courts in that there would be a greater willingness to give some type of authority where they were previously perhaps uncomfortable with giving just guardianship where that was just an option, or would it have no impact? That was just my question.

Ms Kimmitt: Well, you know what? I don't think it would have an effect. I guess it would depend on whatever the supporting documentation is because, of course, that is not finalized yet. Right now you need to have a certificate from a doctor indicating that the person is in need of care, and then you need a functional assessment indicating what the areas of need are. Really, it's going to be a very, very rare circumstance where you're making a guardianship application and you're not successful. I guess that for a co decision-maker application it would depend on what the supporting documentation is. I think that in most cases the court is going to defer to the documentation.

Ms Notley: Okay. I wanted to just touch briefly on point 6 in your submission, which you didn't mention when you were speaking, which is the issue around the ability of health professionals to delegate decision-makers under part 3. You indicated some concern and, in fact, did note that it seemed like more of an adjudicative thing and that it might be something better placed in front of the courts. I think the reason behind that provision is the idea of trying to deal with things very quickly in urgent situations, where health care decisions have to be made quickly. My question to you is: do you have any ideas about how to address the need for speed and efficiency in terms of making that kind of decision outside of what's proposed in the legislation?

Ms Kimmitt: I'm not a medical person, but from the experience that I've had just personally with the medical system, I know that a lot of people don't like the fact that in law a medical provider does not have to listen to instructions from someone who is not an agent or an appointed guardian. I think I can see the wisdom behind that from a practical perspective. Especially if you have an emergency situation – you've got a car accident or something – and you don't know if the person has an agent and you don't know if they've got a guardian and you're the doctor standing there, what do you do? I really think that in those cases the law needs to be behind the doctors just to do what needs to be done at the time in terms of whatever their medical responsibility is. I think that if I was a doctor, I wouldn't want this responsibility, and I think it's unfortunate when medical providers have to be afraid of the law when they're trying to administer their services. I just wouldn't want this if I was a doctor. I hate to say it, but I kind of think the status quo is better than this.

Ms Notley: Okay.

Finally, I was just going to comment that your statements about compensation for guardians are noted with appreciation.

Ms Kimmitt: I get a little passionate about that. My harder job is as a mother.

Ms Notley: I hear that, yeah.

The Chair: Thank you.

Mr. Olson.

Mr. Olson: Thank you. I want to thank you very much for all of these comments. I think they're right on the money, in my opinion. I practised in this area for many years, and I think you got it exactly right.

I do have a question. I didn't see in your comments any observations about the proposed trusteeship plan and guardianship plan. I'd be interested in hearing whether you think that really will add anything, will be helpful in any way.

Ms Kimmitt: I'm really glad you brought that up, not only the guardianship and trusteeship plan but also this whole concept of a review officer. I know my colleagues would hit me over the head if I went back and told them that I forgot to mention review officer, which is in my letter. The guardianship plan and the trusteeship plan is part of that, and it also harkens back to my starting comments, which is that I would really like to make sure this is streamlined for the vast majority of cases. I like the protective measures that have been added into this legislation, but for the most part I think we need to keep it streamlined.

With the guardianship plan I really don't think that adds anything. When you're starting to look after mom, what is going to go into this plan? Okay. She's going to stay at such-and-such place. Does that mean that if she worsens or she's not thriving in such-and-such care facility, you've got to go back to the court to get an approval to change her plan? I don't really think that that's helpful for the guardian because, again, I think these people who are taking on the care responsibility are the least likely to be abusive.

The trusteeship plan doesn't concern me as much because money is a lot easier to plan for than care. If you want to try to come up with some kind of an investment plan and put that together, that's fine. I can see my clients kind of looking at me with puzzled faces when I tell them they have to come up with a trusteeship plan, and I'm not quite sure how that will look myself.

I'll just take the opportunity to mention the review officer. The legislation also requires a report from an individual appointed by the minister to go and meet with the dependent adult and figure out what his or her wishes are and then put together a report. My colleagues and I can see this resulting in a backlog in an already fairly delayed system. It's not bad, but it could be a little quicker. You can just see this person having to go around and visit with all these dependent adults and put their review together, and then the lawyers are waiting for their review. The family is saying: well, we can't wait any longer. So maybe they're making a more expedited application, knowing that it's only good for 90 days, and then getting into the court on the second occasion once the review comes in. I just think it might be another addition being overly cumbersome. I wouldn't have the review officer myself. I like the idea of a complaints officer and an investigator but not a review officer.

The Chair: Thank you.

Are there any further questions from the committee? Okay. Well, Ms Kimmitt, thank you very, very much for coming today and for the obvious thought that went into your submission. It's much appreciated.

Ms Kimmitt: Thank you for your time and commitment to this project.

The Chair: Our next presenter is Mrs. Adria on behalf of the Elder Advocates of Alberta Society. Good afternoon, Mrs. Adria. Thank you very, very much for your written submission to the committee, and we very much appreciate your taking the time to join us today.

Before we start – and I know you've been in the audience, so you probably are aware of the names of the members – I'll just quickly ask my colleagues to introduce themselves to you, beginning with our deputy chair.

Ms Pastoor: Good afternoon, Ruth. Bridget Pastoor, Lethbridge-East.

Mr. Quest: Good afternoon. Dave Quest, MLA, Strathcona.

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

Mr. Olson: Hi. Verlyn Olsen, Wetaskiwin-Camrose.

Dr. Sherman: Good afternoon. Raj Sherman, Edmonton-Meadowlark.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

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

The Chair: We have about 30 minutes. I think the clerk probably discussed with you prior to the meeting that we're trying to keep it so that we have about 15 minutes for your presentation, and then that leaves about 15 minutes for the committee members to ask some questions and engage in a bit of dialogue. So if that's all right with you, the clerk will indicate when there are about five minutes remaining in the 15, just as an assist. As I say, we'll make sure we leave plenty of time for discussion at the end. Please proceed.

Elder Advocates of Alberta Society

Mrs. Adria: Thank you. We of the Elder Advocates of Alberta Society are an anomaly across this province and probably across Canada in that we accept and investigate complaints of elder mistreatment. It is a most stressful and labour-intensive process, but through this process, much to our shock and often disbelief, we uncovered an unbelievable reality of legislative abuse, human rights violations, and Charter violations. We found that in the early '70s the Alberta government established a legislative framework intended to deny rights to seniors. We will be speaking from the perspective of seniors because we're grassroots-level people. Most people, even seniors, don't have that perspective.

1:30

For example, age is not included under the Alberta human rights legislation. In eldercare facilities seniors can be harmed with impunity because there is no viable enforceable legislation. Through the years we have come to personally know the anguish and human devastation resulting from the Dependent Adults Act legislation. You see, we don't ever think that if a senior becomes ill, they can recover. A senior may have had a small stroke or a small injury or maybe a little delirium mixing their medication with alcohol, and they're confused. They're declared incompetent, and when they recover, their rights are totally gone. The act strips vulnerable seniors of all rights – decision-making, right to any monies, bank account, even their identification, birth certificate – their personhood.

They are denied the right to a fair court hearing. In a criminal court you have to have expert witnesses, but with a dependent adult all you need is that form 1, which is a form filled out by a physician who may or may not have assessed or even interviewed the proposed dependent adult. The Surrogate Court does not allow the senior to speak in court. They are referred to as "the estate of" in the court even if they're sitting in the court. Now, I know you may say, "This isn't really what we wanted to hear," but you need to know what this legislation is doing to seniors.

The judge's order grants absolute power to the guardian and trustee. If the senior has owned a home, a house, the trustee changes the lock and denies the owner, the dependent adult, a key. When the senior may be allowed to enter the home, they are cautioned not to touch anything, and they have to pay someone to supervise their visit. Their house may be sold without the owner's permission and often against the senior's wish. Family properties – land, farm, ranches – are liquidated by the office of the Public Trustee. The proposed legislation, the Adult Guardianship and Trusteeship Act, intends to enlarge the powers of the office of the Public Trustee. They administer the second-largest fund in Alberta following the Alberta heritage trust fund. I've been told it's something like $7 billion, but I don't know if that's factual.

There is no onus of duty of care on the guardian or trustee to act in the dependent adult's best interest or to spend the monies of the dependent adult to ameliorate their situation, and we can give appalling documented examples of such situations. You would assume that when one is put under guardianship or trusteeship, it would keep them safe. Why, then, do we spend hours writing letters to government in defence of vulnerable seniors, appealing for their safety?

Last week we spent several hours with the Edmonton Police Service in regard to a man detained at Alberta Hospital behind locked doors. This frail, elderly, wheelchair-dependent man – incidentally, he was a high-profile businessman known as the Mayor of 1st Street – is being physically and chemically restrained, has been drugged until he was stuporous, administered a contraindicated medication that could kill him, had an injury to his left-hand wrist, fingernail picks on his right lower arm, and a gash on his forehead. Now this man's wife wishes to have her husband removed from Alberta Hospital. However, the court took away her rights as agent and appointed the public guardian, giving full rights to the office of the public guardian.

The guardians and trustees are untouchable because there is no provision within the legislation to discipline them except to apply to the court. Who will apply to the court? The dependent senior who now has no access to monies or lawyers? Furthermore, they are immune from liability. A dependent adult has no right to sue those who detain him. A dependent adult is denied the right to review or even see the assessments which declared him incompetent. We know all these things through our interviews with dependent adults.

A common criminal, however, has a full right to sue his captors. He also has the full right to disclosure of charges made against him. A senior who may be in his 70s or 80s may be kept going from one stressful assessment to another. We know of one senior, a multimillionaire who has said to me, "You know, I built the wealth of this province," who is now defenceless. In 15 months he was assessed 12 times by physicians, psychologists, geriatric specialists. This could be considered an industry or maybe even a feeding frenzy. The senior is desperately hopeful that his rights will be restored when the matter is heard again and again before the court. However, the estate is withheld, literally stripping the senior naked. This multimillionaire that I refer to does not even have a watch. In that case the family is withholding it, and he's in a locked unit and is very rational.

The whole legislation disallows the senior to go forward in his or her life to enjoy the fruits of their lifelong labours. You should know who pays: it's the senior. It's the dependent adult. In Surrogate Court matters the court orders that all lawyers, physicians, and court get paid by the senior's estate. His hard-earned money pays for his keep, for court application, and for all the ongoing assessments, which may cost in the area of $5,000. His carefully earned money pays for the lawyer who is retained to deny the senior his rights. Often these dependent adult matters may continue on for years until the estate is exhausted. We are aware of one such estate

matter which has been before the Edmonton Surrogate Court since 1996 and which will be heard again this week.

Now, all of this is not known to trusting seniors because they would not even believe it, and when it affects them, they are helpless to do anything about it. The proposed legislation has forgotten – and I'm again speaking totally from the point of seniors – that the actual ownership of the wealth of a dependent senior actually belongs to the senior himself and that its first priority should be for the well-being of the senior himself or herself as the case may be.

You know, we've heard lawyers here. I realize this is from a different perspective. You should also know that it's almost impossible to find a lawyer to act on a senior's behalf once they've been declared incompetent. We took one person to a high-profile lawyer. He sat there in his wonderful office, and after we had made our case and the dependent adult had made their case, he said: well, who's going to pay me?

We urge you to allow your conscience to guide you to direct the legislative specialists to go back to the drawing board. We need compassionate, equitable legislation, legislation that safeguards the well-being, the human rights, the Charter rights of Alberta's senior citizens.

I thank you.

The Chair: Thank you very much. Are there any questions from members of the committee? Ms Notley, followed by the chair.

1:40

Ms Notley: Thank you very much for your presentation. You make a number of really good points. Of course, we hear about the potential for abuse, and this whole thing is structured to minimize that, or that's certainly the way it's characterized to us. Then there's the other side: how can we facilitate it where there is no abuse? I'm curious as to what your observations would be, not so much in relation to, you know, the incidents where you've been involved with people in care and what may have happened when they were in care because I think that in some ways that's a bit of a separate issue from this issue.

Mrs. Adria: Yeah.

Ms Notley: Right. And a significant one of which we're all very aware.

But in this relationship in terms of the establishment of dependants or, you know, the establishment of guardianship and the management of affairs, do you have any way to give a sense of how often it's not working: the incidence, the percentages, or just the raw numbers where you're seeing that those who are in those positions of guardianship are abusing their authority?

Mrs. Adria: Well, you see, when we get the complaints, of course, it's where it's not working. We have complained to the minister's office. Their office is well aware that there are major concerns. When we specifically complained about a situation of abuse by the guardian, we were told by an executive assistant that they have no jurisdiction. Now, that's frightening because they have total power over human beings. Like I say, there are seniors, of course, who have severe cognitive issues, but even those are placed in locked units on the assisted living. No doctor comes; they are cared for by people who are hired off the street; the medications are given by people who have no training. That is the safe place for them? I don't think so. It is frightening.

And it says, again: "will act in the best interests." That's not happening far too often. As a matter of fact, I would say that it's epidemic. You have guardians who – then it's just like in a nursing home. Why do staff act abusively? It's like when they get on this power trip that they act in total disregard for the rights and well-being of the person. It is horrible.

Ms Notley: Because I understand the nature of your organization, it's fine if you're not able to answer – it's not an answer one way or the other to the question if you're unable to answer – but I'm just curious as to whether you're able to give any sense of numbers. I assume that you deal with complaints not only from elders who are in this particular legal situation where they've got guardians but also a lot who may be in long-term care homes or whatever. I'm just curious whether you're able to give us any numbers in terms of this particular situation where the issue is that the guardian is not fairly representing their interests.

Mrs. Adria: Okay. The problem is – and I said it in the beginning – that there is no protection. There is no protective legislation. You can harm a senior with impunity. When Jennie Nelson was scalded, no one lost a job. No one was held accountable. The Protection for Persons in Care Act is a nothing. They can only make recommendations; they cannot even investigate. When these people who are under guardianship or trusteeship are being abused, there is no legislation to hold them accountable. Ultimately, it's known. It's a loud, clear message: we can do what we like with these people.

Ms Notley: So would it be safe to say that you believe that this legislation in whatever form it's in needs to have a whole . . .

Mrs. Adria: It's a violation of Charter rights, first of all.

Ms Notley: The whole legislation? Or do you think that if there was some provision for protection and complaints . . .

Mrs. Adria: Enforceable protection.

Ms Notley: Right.

Mrs. Adria: You see, as I say, we uncovered in the early '70s, if you go through the legislation, the Protection for Persons in Care Act, that age is not included under the Alberta human rights. The rights and final wishes of the maker of a personal directive or power of attorney are not protected. They can be easily overturned by the court. So I make a personal directive in favour of someone, and then someone comes along, goes to the court, and overturns it. That's what happened in that story about Alberta Hospital. The husband gave it to his wife. Then a disgruntled family member, who never cared, went to the court, and the judge within one day appointed the public guardian, who now allows this abusive situation.

Also, there is no requirement to register the personal directives and powers of attorney with government, and this failure allows estate theft. You see, you appoint someone, you give them total right, and then they dissipate the estate, and by the time this becomes known, it's gone. We hear this. Then who does something about it? The police really won't act.

Ms Notley: Thank you.

The Chair: I know we have a couple of other questions for you.

Mr. Olson: Obviously, your reality is that you're dealing with worst-case scenarios.

Mrs. Adria: That's our reality. That's right. That's our world.

Mr. Olson: I guess, my problem is that we have to deal with not only the worst-case scenarios in this legislation but also what I would consider to be, based on my 30-some years' experience, the vast number of cases, where you're dealing with caring people who are trying to be as helpful as possible and don't want to get buried in red tape. That's the balance that we need to strike.

As I was listening to you talk, one of the things I was thinking about is the whole issue of personal directives and enduring powers of attorney. I assume that your organization is very aggressive in encouraging people to be doing them.

Mrs. Adria: They should be registered.

Mr. Olson: But are you encouraging people to do them?

Mrs. Adria: Why would we? They can be easily overturned. They're worth nothing. In the case of the millionaire they did not even follow his directive.

Mr. Olson: Madam, I beg to disagree. That is not a reality. It certainly is a reality in the cases that you're citing, but province-wide it is not the reality.

Mrs. Adria: But how do you know that?

Mr. Olson: My colleagues are lawyers who have to go in front of a judge. I have actually had judges threaten to throw people in jail for not properly accounting for money when the judge has told them to. Judges take a very dim view of people taking liberties with other people's money.

Now, is it a perfect system? Absolutely not. Again, my point is that we have to deal not only with the bad apples, with your reality, but we also have to deal with what I would consider to be the vast number of people, who are just trying to help a family member in the best way they can.

Mrs. Adria: The fact that you can declare a person incompetent – you know, in a criminal court there's a requirement for an expert witness. That expert witness has to give testimony. He has to be there for cross-examination, cross-examination of documents. I included this, our little form, here, this little scrap of paper.

We have documented examples where physicians have failed to interview. One physician, who will be appearing before the College of Physicians and Surgeons in December, saw the dependent adult in December. At that point he said that she could move to a less restrictive living. Then all of a sudden for some reason in February he fills out a form and says, you know, that she's totally incompetent. I mean, we have that documentation. You see, if it happens once, it's once too often. These are human beings.

Mr. Olson: If I may. I agree with you. A doctor who did that is deserving of sanction. But if we're going to have a full-blown trial and we're going to bring in doctors as expert witnesses, what do you think that's going to do to the legal costs of these applications? Again, we have to strike a balance.

Mrs. Adria: This is far too loose. Then once you're declared incompetent, no lawyer wants to touch it. Nobody wants it. We talked to one lawyer in regard to another issue, and he said: oh, I used to do that 10 years ago. He says that it's too stressful or something like that. That's the reality. You find me the lawyers who will do it.

Mr. Olson: Lawyers in my office do these kinds of applications, represent people who are alleged to be dependent adults. Lawyers in my office.

Mrs. Adria: Give me your card.

1:50

Mr. Olson: I know of situations. If you want to cite situations, I can cite situations, too. I obviously can't give you names because there is confidentiality involved.

Mrs. Adria: Okay. I'm sorry. We don't want to cause any difficulty. This is our reality, that seniors – as I said, it's their wealth, it's their money, and their rights are totally gone. You become a nonperson.

The Chair: Thank you. I think we've had the question asked and answered.

Are there any other questions?

Dr. Sherman: Mrs. Adria, I thank you for presenting to us today. You know, I'm the doctor in the group, and we deal with this every day. We have five young people for every senior today. We're going to have three for every senior tomorrow. The number of seniors is going to increase. I do appreciate you being the conscience of this legislation, and I think we do have to be open to criticism. Part of the reason we're here is on the one hand to have good public policy and at the same time protect those vulnerable people who do not have a voice.

Having cared for 80,000 patients, many of them who were seniors, I have taken people's rights away because they were at a time when people are sick. You have a stroke. You're ill. Decisions need to be made, and they need to be made now. Being an inner-city emergency doctor – my own father had a stroke. We didn't take his rights away, but we didn't let him make any decisions because he was incapable of making them.

I think that when you go to court, that's usually a failure in diplomacy of a family and failure of communication of a family. I will say and I am sad to say that there are cases that fall through the cracks, but for the most part every health care worker out there – and as you can see from the lawyers that are involved in this kind of work, they don't get rich from doing this. There aren't that many of them.

We do need to streamline the process because of all the seniors coming forward. If the process isn't streamlined, I'm afraid more seniors will not get the care and the respect that they deserve, but at the same time I do believe – I do believe – we have to pay attention to some of the points that you've brought up in some of these cases. I think some people have been failed. Basically, what you're suggesting is that, really, you need a voice, a voice that you can trust, a voice the seniors can trust and rely on, perhaps an ombudsman. I don't know if we built that into this legislation. I think part of the reason we may pass laws is to protect those folks, and I do appreciate your comments.

I don't really know if I have a question for you but more of a statement. I will say that even my good friend Mr. Olson here is a good defender of seniors, and he's done a lot of this work before. I believe that all the health care providers in the long-term care facilities do the best that they possibly can given the resources that they have. But your points are very well taken. I do believe and my guidance to my colleagues is that we do need to have some protection for the seniors in these instances. Going to court is a failure of us having good policy. If we have some recourse to address these

concerns, I think then we'll have good public policy coming out of here.

Thank you.

Mrs. Adria: Thank you. There has to be accountability. In the whole system for seniors there's no accountability.

The Chair: Okay. We have time. Ms Pastoor has a question, and then I have a quick question as well.

Ms Pastoor: Actually, it was just a comment. I just wanted to thank you very much for coming because I'm very aware of exactly what you're talking of. You know, they're certainly some of the issues that I've been fighting for. I'm hearing loud and clear what you're saying about the fact that, yes, there are some processes but that they're not enforceable and that they're not accountable. I think that some of the things that I've been concerned about, which I know are the same that you've been fighting for over these many, many years and actually have devoted your life to, are going to be addressed in terms of being able to actually review the decisions of someone being made incompetent. There is that process there that will help that exact problem. Do I think this is going to help you, Mrs. Adria, and that you're not going to have other cases that you're going to have to work hard on? No, I don't. I think you and I both know. But I do think that you've hit on the point that we have to have something that is very accountable. Thank you for all of your time.

The Chair: Just in closing, I wanted to echo the comments that my colleagues have made as well. Your input has been extremely helpful for this discussion. I wanted to ask you a question and just ask for your feedback. Now, this is specific to the legislation that we're considering. In the mental health system when a patient is, quote, certified, there is a process that kicks in whereby the Mental Health Patient Advocate, an independent officer, has under legislation an obligation to inform the person of his or her rights; to explain them in detail; to offer assistance in terms of acquiring information, accessing officials, seeking information. All of those sorts of things are provided for in a case where someone is certified under the Mental Health Act. It's perhaps, you know, akin to an ombudsman role. I look at it as a little more direct advocacy that's provided for in legislation.

I'm just wondering if you think that a similar arrangement would be of assistance, would help. Perhaps it wouldn't. It certainly wouldn't eliminate the cases that you have described for us today, but would it perhaps be a disincentive to those who might otherwise take advantage of a senior who is vulnerable if there was an appointed advocate who had an independent relationship with that individual?

Mrs. Adria: No. There has to be individual. You know, as far as the Patient Advocate goes, we know that in Alberta Hospital often the person is – well, first of all, if you're certified, you have no rights but are encouraged to become a voluntary patient, and then the Patient Advocate has no power. For instance, this story that I just dealt with where we were with the Edmonton police: they kept saying that they can't do anything. Anyway, there has to be the individual guardian. The individual person has to somehow be made to be held accountable, not some ombudsman. We shouldn't have to go that route. There has to be accountability.

Right now you can abuse a senior with impunity in a nursing home, under the guardianship act, the trusteeship act, and no one has jurisdiction. That's the reality. I know there are seniors calling for a senior whatever. It won't do it. It won't change anything. Finally, we have to hold people accountable for the way they treat seniors, and much of this legislation is in Charter violation.

The Chair: Okay. That didn't pertain to my question, but I'll finish there.

Mrs. Adria: Maybe I'm a little around the bush.

The Chair: No. That's fine.

Mrs. Adria: I'm sorry. I get very passionate.

The Chair: Not at all.

Mrs. Adria: I mean, these are people. We see the tears. We hear, you know, the pain. Let me tell you about one man. He earns over $4,600 a month. He had bipolar, but then at Alberta Hospital he was declared incompetent. Why? I don't know. Anyway, he is made by his guardian and trustee to live at that downtown – what do you call it? – Boardwalk, where I went to visit him. I was uncomfortable. I was nervous in the elevator. The place is dirty. There are crackheads. It's a high-rise. It's the same building where that man, Mr. Li, who beheaded on the Greyhound, lived. Vulnerable seniors are living there. He can't get away, yet he earns $4,600 a month because he was very adept at working the stock market. Do you know what I mean? He can't do anything. He complained. Yesterday, or whenever, we were before the review panel. I was there. The lawyer for the review panel just said: "Whatever, you know. You can't have your rights. I'm sorry." It's not good.

The Chair: With that, we've come to the end of our time, but I want to thank you very much on behalf of all my colleagues.

Mrs. Adria: Thank you for allowing me to speak.

The Chair: Not at all. It's our pleasure. Thank you.

I'd just ask my colleagues here. We had scheduled a full half-hour break at this point. We could maybe take a shorter break if you're amenable to that and finish a bit earlier. Would 15 minutes be sufficient, to 2:15? See you then. Thanks.

[The committee adjourned from 2 p.m. to 2:13 p.m.]

The Chair: Good afternoon. I'd like to call the committee back to order. We're continuing with oral presentations on Bill 24. Our next presenter is Ms Sandra Harrison, the Mental Health Patient Advocate for the province of Alberta. Ms Harrison, good afternoon and welcome.

Before we begin, I'll just take a moment and give my colleagues an opportunity to introduce themselves.

Ms Pastoor: Hi. Bridget Pastoor. I'm the MLA for Lethbridge-East.

Mr. Quest: Dave Quest, MLA, Strathcona.

Mr. Dallas: Thanks for joining us. Cal Dallas, MLA for Red Deer-South.

Mr. Olson: Hi. Verlyn Olson, Wetaskiwin-Camrose.

Dr. Sherman: Hello. Raj Sherman, Edmonton-Meadowlark.

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

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

The Chair: I'm Fred Horne. We know each other, Sandra. I'm the MLA for Edmonton-Rutherford.

We have about 30 minutes or so this afternoon. As the clerk would have discussed with you before the meeting, we'd like to divide that between approximately 15 minutes for a formal presentation, and then we'll use the balance of the time for questions and discussion with the committee. The clerk will indicate when there are about five minutes remaining in the 15-minute portion, just as an assist to you. With that, I'd just like to invite you to proceed.

Alberta Mental Health Patient Advocate Office

Ms Harrison: Thank you very much. It's a pleasure to be here this morning. It's a privilege and an opportunity to speak to the standing committee, and I really appreciate being involved in this important piece of legislation. I am Sandra Harrison, as was mentioned, and I am the Mental Health Patient Advocate for the province. I am a social worker by training and have extensive executive experience working in the provincial correctional system and in mental health. I have been appointed by the Lieutenant Governor by order in council, and while independent from the Ministry of Health and Wellness I report to the Minister of Health and Wellness in my statutory role.

In 1990 the government of Alberta established the office of the Mental Health Patient Advocate to create an independent voice for the most vulnerable patients in the province. As the Mental Health Patient Advocate it is my responsibility and my honour to work to ensure that the legislative rights of vulnerable formal – that is, certified – patients detained involuntarily in any one of 16 designated mental health facilities across the province under the Mental Health Act are promoted and protected, to ensure also that their needs are considered and met whenever possible, and that they are supported to make responsible decisions that affect their lives.

Currently the Mental Health Act and regulations mandate that the Mental Health Patient Advocate will investigate complaints relating to involuntary patients. However, the advocate's jurisdiction is being expanded to include those persons who are out of hospital, in the community under new community treatment orders.

The patient advocate office is located in Edmonton, and we have four staff. We operate a call centre, and we do extensive outreach work with patients and health care professionals across the province. The work of the office is supported by a lawyer with experience in mental health law, Mary Marshall, and I'd like to introduce Mary to you today.

The patient advocate office investigates and finds solutions to matters relating to the Mental Health Act, patient rights, administrative fairness, the provision of services to a formal patient or a failure or refusal to give such services, terms and conditions under which they are provided, abuse, and professional practice and unprofessional conduct.

Often patients who call the Mental Health Patient Advocate office experience difficulty in exercising their legislated rights and navigating the different patient pathways for mental health services. Patients often express concern about their detention and care, including consent for treatment and the degree to which they are involved in decision-making processes about the management of their illness and their lives. The office facilitates discussions between clients and their treatment team and also with families.

Advocacy is the cornerstone of everything that the Mental Health Patient Advocate does. The office helps patients to act on their own behalf and ensures that the treatment team takes into account the patients' viewpoints. The Mental Health Patient Advocate carries out this work independent from any person responsible for the patients' treatment or from those who have direct, indirect, or administrative responsibility for treatment decisions. Actual and perceived independence is a cornerstone of all that the Mental Health Patient Advocate does.

Patients often question whether the office is affiliated with the service providers, and reassurance around independence is a key factor in the advocate's ability to work effectively. Some patients talk to us about the patient reps who are located right in the hospital facilities and ask if they are working for us because they perceive them to be interested in what's happening in the regional health authority as opposed to being independent. In fact, those patient reps are not affiliated with our office.

From discussions with patients the patient advocate office has gained valuable insight and perspective based on first-hand accounts of individuals with personal experience of mental illness and health care and other support systems. As a result, the office has achieved a depth of knowledge and understanding of the issues concerning people with mental illness.

The Mental Health Act recognizes that involuntary detention and treatment engage a patient's rights to life, liberty, and security of the person under the Canadian Charter of Rights and Freedoms and that the principles of fundamental justice require safeguards, such as access to the Mental Health Patient Advocate and an independent review of detention and treatment decisions by the mental health review panel. Likewise, the changes proposed by Bill 24 have the potential to impact patients' rights under the Canadian Charter of Rights and Freedoms. As such, there should be close consideration of what safeguards are necessary in order to ensure that patient rights are protected.

I previously provided a written submission to the committee, including a summary of recommendations, and I won't review those recommendations in any detail here. Instead I'd like to focus on just a few points related to patient rights. These were covered in my submission, but I'll just mention them here.

2:20

The very first is that we feel it is important to carefully review the Mental Health Act as amended – so it's the Mental Health Amendment Act – and ensure that there is coordination between that act and Bill 24. Both statutes deal with mental competency and substitute decision-makers. As far as possible the provision should be harmonized and consistent.

Secondly, Bill 24 should make it clear what court orders are meant to cover. My office has received a number of complaints relating to patients who are detained pursuant to a consent given to hospital personnel from or by the patient's guardian or agent. When admitted and detained in this way, these patients are denied access to review and appeal processes that are guaranteed under the Mental Health Act. This is unacceptable. Simply put, all patients who are involuntarily detained in a designated health facility should be entitled to the same protections and safeguards.

Thirdly, Bill 24 has a significant impact on the decision-making rights of individuals in relation to several key aspects of their lives. However, the bill does not include requirements to provide an individual whose decision-making powers might be taken away with information about how this might occur, or for a person independent from the situation to explain his or her rights to the individual who is the subject of an application for an order. The statute also does not appear to ensure access to legal counsel for the person affected. Requirements for the provision of such information and the availability of an independent advocate and/or counsel to advise and

explain processes under the act are important to permit individuals to exercise their rights to participate in and respond to the various processes under Bill 24. Based on our experience, the act should also include a way to oversee that such activities are carried out appropriately.

Fourthly, the Adult Guardianship and Trusteeship Act does not include a role for the Mental Health Patient Advocate. It may be helpful to know that section 10 of the Protection for Persons in Care Act allows for co-operation when there is an overlap in jurisdiction and has been used by the minister to make referrals to the Mental Health Patient Advocate. Once again, based on our experience, it is recommended that the act allow for a referral of a complaint to the Mental Health Patient Advocate when there is an overlap in jurisdiction. Given that Bill 24 will often impact the same population as the Mental Health Patient Advocate, it's important that the roles and responsibilities of complaint officers and investigators are clearly distinguished from those of the advocate.

As mentioned, additional details are provided in the written comments that were submitted to the committee. I would just like to close by saying that I want to reiterate that I believe it is our shared responsibility and moral obligation to ensure that individuals in recovery from mental illness know and exercise their right to be heard, respected, and encouraged by hope for a better future. In keeping with this obligation, I recognize that the proposed statute strives to balance protecting adults who are unable to make decisions for themselves while respecting their desire to be as independent as possible for as long as possible. The recommendations made are intended to clarify areas that have been the subject of complaints and inconsistent interpretations as it relates to mental health and to promote and ensure patient rights are protected in decision-making processes related to a person's well-being or finances.

Thank you for this opportunity to speak to the committee today. I look forward to the outcome of your deliberations. Thank you.

The Chair: Thank you very much, Ms Harrison. I think we'll open it up to questions from the committee. Just before we do, we have with us today officials from the Department of Seniors and Community Supports and the Public Trustee. On some of the questions – I know one in particular that I'm hoping to ask if there is time – if it seems to make sense to add some information to help clarify an answer, please feel free to approach the table and participate. Do we have some questions?

Okay. I'll start with one, if I may, then. We've had some excellent briefings prepared for us that compare the Dependent Adults Act, the proposed legislation, and the Mental Health Act. I'm still struggling a bit with understanding on a practical level where overlap may occur, so I'm just wondering if you could provide us with a couple of examples. Then, perhaps, with the aid of some of the other officials we can sort out which legislation would apply.

Ms Harrison: I'll defer in some to my counsel, who is more of an expert in interpreting statutes than I am, draft or otherwise.

We certainly would share some common populations in the clients who would come to us with concerns and complaints about their care in detention. There's potential overlap or confusion in some of the definitions, in what's included in one of the pieces of legislation and not in the others. The consent issue is probably one of the biggest areas where we see potential for overlap/duplication confusion about what legislation should be followed. I know if Mary could reach me under the table, she'd be saying: ask for more time to study this question carefully so that we give you a very thoughtful answer and a more specific answer than I'm giving. I'll just defer and let Mary speak to this.

Ms Marshall: Actually, I wasn't thinking that at all. I was hoping you wouldn't field it over to me. I think there are a couple of areas where there's overlap. One area is when someone is in the hospital in a designated facility and, apart from the mental health treatment and care that they're receiving, they also have some sort of physical concerns, and they're receiving treatment for that. How do you obtain consent to treatment? Who is the person who gives that consent? Who's the substitute decision-maker?

Probably of more concern is the situation where somebody has a guardian or a substitute decision-maker and they are put in a designated facility pursuant to a consent from that guardian, as the patient advocate mentioned in her presentation. What does that entail? Then the consent to treatment under the Mental Health Act if they're not competent: again, do they have access to all of the review provisions that are under the Mental Health Act, such as the mental health review panel? There has been confusion over the years in the interpretation of the existing legislation, and unfortunately that confusion often results in the patients not having sufficient protection for their rights. Those are two examples.

The Chair: Colleagues, you know, interrupt me if you have other questions that are arising here, but just as a supplemental. Is it possible, then, that a person is denied access to a review panel because a consent to treatment was provided under a guardianship order, which is a process separate and apart from the admission process to the facility that would occur had the person not been the subject of a guardianship order? You're saying the person could not have access to a review panel in theory or in actual practice?

Ms Marshall: I'm saying that in practice that's the way it has turned out. That's why we're asking for clarity and consistency in co-ordination, a close study: because in practice that's the way it's turned out. Perhaps there are arguments that it shouldn't have turned out that way, but it's not sufficiently clear, so we're asking that as the legislation is developed, it's made very clear from the legislation what orders cover so that when there are orders made, there's not that problem in interpretation, that practically, when it's rolled out at the facility level, it's very clear what the orders can encompass and what they do encompass and that patients who are detained in a designated facility have access to all of those rights/protections.

The Chair: Brenda Lee.

Ms Doyle: Thank you. I just want to clarify what's typical and what's atypical in guardianship situations. If a person has a guardian and then they go to the hospital because they are at risk to themselves or others, then it's the psychiatrist who is assessing them to see whether or not they need to be detained. Then they would fall under the Mental Health Act. That person, when they're a formal patient who's detained at a designated facility, does have the rights for a review. The guardian can trigger a review, and it has all the kind of rights protection and access to the Mental Health Patient Advocate. That situation is pretty clear. I would say that's the vast majority of situations, more than 90 per cent.

2:30

You do sometimes have situations – and I did kind of do some research on this yesterday to say: how typical is it, or is it not typical? – when the public guardian is going forward and having someone brought to a facility such as Alberta Hospital Edmonton to the STARS program on a voluntary basis. It's the idea that the dependent adult is agreeing to it and the guardian is agreeing to it, and they're going there for an assessment. It could be a medication

assessment; it could be a behaviourial assessment. When they're going in as a voluntary person and they're agreeing and the guardian is agreeing, then the Mental Health Act doesn't really come into play because they're not detained.

I think I agree that we need to make sure that both the Mental Health Act and the Adult Guardianship and Trusteeship Act work very closely together. Certainly, both organizations have talked about these issues and how to make it as clear as possible. But that seems to be when it's a voluntary person coming in.

I don't know. Do you have comments on that?

Ms Harrison: I guess our experience is – and I agree with you – that the legislation can be confusing for those on the ground trying to apply it, the pieces: which act should I proceed under? Perhaps the patient really meets the criteria for being certified under the Mental Health Act, but there's a guardian who's saying, "I want the person to come in," meaning well but not having the clarity around which piece of legislation to act on. The patient may actually be detained involuntarily under direction of a guardian. I'm not saying the public guardian but a guardian or an agent. In those circumstances because they're not certified, they cannot appear in front of the review panel and so forth. So it needs to be very clear and easily understood for those people who are applying the legislation.

Ms Doyle: I would say that in that situation the Mental Health Act should be the act, not the adult guardianship. The order, if you're going to court and the court is giving a guardian the area of authority in health care, doesn't break it down into physical care or mental health care. It just says health care. So the guardian has a broad power around health care. But when you're talking about detaining someone and the person is getting treatment under a designated facility, then the Mental Health Act should apply.

Ms Harrison: Yeah. We agree.

The Chair: Thank you.

Other questions or comments?

Ms Pastoor: I just wonder if I could have a clarification on that. Where would someone being detained in a locked unit because of Alzheimer's fall? I would suspect it would be health care, but it also could be mental. Or somebody detained in a locked unit because of a behaviour that might be based on, you know, medication mistakes or whatever. Then it goes under mental, but it really probably is health. It's such a fine line. Brenda Lee, I wonder if you could maybe make a comment on that.

Ms Doyle: I'll speak to when it's not a mental health facility. If it is a nursing home with an Alzheimer's unit, where it's locked so the person won't wander off the unit, then the guardian makes the decision. If they have the authority around where to live and health care, they would be making that decision. Now, what they would be balancing in that decision for a person to be on a locked ward would be their best interests. Are they going to be safe there, and will they get the care and treatment that they need?

Ms Pastoor: Okay. In the future – I'm thinking of the numbers of FAS people that will mature – I can see a fine line coming between what is mental health and what is health: mental health and other mental health. I can see it getting kind of blurred on that. Then we're going to have to end up with a lot of locked units because of the violence sometimes of those people.

Ms Harrison: We wouldn't disagree that sometimes it's a fine line. It comes down to the psychiatrist making the decision: are the criteria met under the Mental Health Act?

Ms Doyle: I would agree.

Ms Notley: Mine was a bit of an extension of the same question. Just going back to originally, where you had said that where it's a facility, it doesn't mean the facility of the Mental Health Act applies. Just to clarify for me, where there's a community treatment order, the Mental Health Act applies even if there's also a guardian who has authority over health care?

Ms Harrison: Yes.

Ms Notley: Then just to sort of follow along again with the vice-chair's questions, am I correct that the guardian would most likely be in charge of a situation where there might be an addictions issue that impacts on capacity but not necessarily a diagnosed mental condition beyond the addictions issue?

Ms Doyle: Yes.

Ms Notley: Because that's kind of a toughie, that one.

Ms Doyle: It's a tough role.

Ms Notley: And then the same thing where you might have someone with primarily physical complaints who is losing capacity secondary to treatment, you know, the side effects of the drugs?

Ms Harrison: Yes.

Ms Notley: So there, then, they have a different process they can access to secure their own accountability or to challenge. That's different. They don't have access to a review board type of arrangement in that situation. Correct?

Ms Doyle: No, they wouldn't have the review board. But if they had a complaint about the guardian, then sections 75 through 76 say that they can make a complaint, and that can be investigated. If they felt that the guardian was being unduly restrictive and wasn't allowing them to have more experiences, or they felt that the treatment provided was of concern, then they can make a complaint under the act.

Ms Notley: Can I ask one more question?

The Chair: Of course.

Ms Notley: I could look this up myself, but are the remedies in the scope of intervention given to the officer under sections 75 and 76 similar to the remedies that are available when one goes to the mental health review board?

Ms Doyle: Would you like me or Sandra?

Ms Notley: Either one.

Ms Doyle: The remedies under the investigation process. If it's a founded complaint – so it has been determined that there has been some wrongdoing – the remedy is an educational approach. They see if they can resolve it. The person maybe just didn't understand their role.

The next one could be mediation, alternative dispute, or it could be an application by the investigator – the office of the public guardian or the office of the Public Trustee – to take it back to court to remove the guardian.

Ms Notley: Right. That compares with the remedies under the medical review panel.

Ms Harrison: Yeah. I should just be clear that the review panel under the Mental Health Act is actually where a patient can take a concern around the treatment, around their detention and that kind of clinical treatment. Our investigation does not involve the review panel in any way. We're not affiliated with the review panel in any way. So if a concern or complaint is brought to me, we'll investigate it. We do most of those informally: talk with the care provider and so forth. When I say care provider, because our patients are formal certified patients detained in hospital, that means the treatment team folks.

Under the statute we also can do formal investigations or go out and interview people and write a report, write recommendations, require the facility to implement or respond to those recommendations. If I'm not satisfied with the action that they propose to take and do take – I follow up – then it says in the statute that I can take forward to the minister that there is a problem. I'm pleased to say that that has never had to happen. The facilities always take the recommendations of the advocate very seriously and respond appropriately.

Informally we also look at education and so forth, and sometimes we see a bit of a pattern happening. If it's not something that needs intervention right away – I mean, there are certain things that are so significant and serious that one must take certain actions immediately – if it's a misunderstanding, not understanding how the act applies, then we would go out and train staff in how to apply the piece of legislation, make some clarity around another piece of legislation versus this one and so forth.

2:40

The Chair: Dr. Swann.

Dr. Swann: Thank you very much. Have you said all you wanted to say about the ambiguity or overlap between the advocate and with the other complaints and investigation officers, or is there something else you want to highlight about what needs to be clarified there and distinguished between those roles?

Ms Harrison: Now, are you speaking about the patient reps in the facilities, or are you speaking about others?

Dr. Swann: Both. Wherever there is ambiguity in your role relative to the existing guardianship and trusteeship roles.

Ms Harrison: Okay. I think that in the summary of recommendations we really have addressed our issues, yes.

Dr. Swann: Okay. Thank you.

The Chair: Dr. Swann, just on that vein. I was going to suggest that it might be helpful to the committee if you'd be willing, Ms Harrison, to maybe provide us with some supplementary analysis specifically about the areas of overlap between the proposed legislation and the Mental Health Act. I think you should include in that your specific role and, in addition, you know, anything else that you think should be pointed out to the committee. I think it would be particularly useful for us to have it from the perspective of a patient suffering from mental illness. We have had some excellent briefing already from the other department, but what might also be useful to the committee is a similar brief but this time from the perspective of the person who's the subject of a guardianship order and any identified areas of overlap.

I know it's such a difficult area. It's a very dense area to try and discuss. We've talked about the patient under a community treatment order. There are people with a dual diagnosis of mental illness combined with some other condition such as Down's syndrome, for example. There's the case of addictions that Ms Notley referred to. The act discusses competency in terms of a continuum and someone, for example, suffering from dementia whose ability to make decisions varies in accordance with wherever their condition is at a particular point in time. I've had some experience with that in my family.

I think that would be useful, if my colleagues agree, and as specific as you can get. Even some vignettes would be helpful to us. It's just a suggestion and also a request for officials in the other departments to consider. I think that will figure prominently in our discussions around our report to the Assembly. Would your colleagues be in agreement with that, just making that request?

Ms Harrison: We'd be pleased to do that.

Dr. Sherman: Well, thank you for appearing before us. I just have a couple of questions that I'll preface as an emergency doc and a primary care front-line health care provider. Typically even when it comes to capacity, it's ideal, when a patient cannot make their own decision, that they have a guardianship order. When mental health patients come to us, they either come by police with a form 10 or a wilful 24-hour form 1, at which time the psychiatrist fills in, I believe, a 72-hour certification.

The other issue that can sometimes be a bit complicated is someone who is medically ill. We don't have a clear form or clear guidelines. Usually the guidelines are: are they mentally competent, do they pass a mental status exam, are their vitals normal or abnormal, are they intoxicated, are they head injured? In those instances we fill in a two-doctor consent.

In all those three scenarios treatment is being done to patients. They may not be aware of the treatments. They haven't consented to those treatments. My question is: in those scenarios where does the ombudsman become involved? As far as I'm aware, when I fill in a form 1 and certify someone for 24 hours, we typically don't give the patient an alternative. We have many patients. Well, the reason we fill it in is that those people don't want to be there. They always say: "Well, I want to talk to my lawyer. I'll call my lawyer." It's usually 3 in the morning and they have been certified, but there's nothing on the form saying: here's an opportunity for you to call somebody independent. I'm not sure what happens when they leave us and go into the psychiatrist's hands. I know there is a mental health review panel when they have a 30-day certification. So that's one question: when do you become involved?

The other one would be that I think you heard some pretty passionate remarks from a senior advocate on mental health issues. I wonder if you could comment on some of their concerns and whether you feel that our legislation has enough protections in it to address the concerns of the seniors' advocates.

Ms Harrison: Thank you. I made a note here. Mary, pick me up if I'm missing anything.

It is interesting that under the Mental Health Act, under the one certificate at this point in time the advocate does not have jurisdic-

tion over those patients. We do get a number of calls from patients who have concerns about their experiences in emergency. When we look into those, we often discover they were on the one certificate; that means that they're outside the jurisdiction of my office. We have raised that as an issue under the Mental Health Amendment Act, that went forward and was given royal assent in December but is not yet proclaimed. The regulations are being drafted, and we have strongly recommended and have some indication that people who are under one certificate would in future have access to our office. That's where we would become involved earlier with patients. At this point in time under the Mental Health Act they need to be under two certificates to fall under our jurisdiction.

Dr. Sherman: Would that be like a form 10 from the police and form 1, or a form 1 and then the 72 hours, or the 72 and 30-day? Which two certificates in particular?

Ms Harrison: It's not the apprehension and transport. It has to be under two certificates, so the longer hold under the Mental Health Act.

Dr. Sherman: The three-day and the 30-day. So I could actually certify Ms Notley.

Ms Harrison: And she could not get my help, but in the future.

The other question was in relation to a seniors' advocate, I think – would that be helpful? – if I'm hearing you correctly. I mean, I am a bit biased. I think that the advocate is very helpful. Our role is different than an ombudsman. An ombudsman here in Alberta looks into administrative fairness, where we actually look into administrative fairness, but we also advocate and bring patients and treatment teams together and resolve and investigate details of circumstances. So it's more than administrative fairness. I do believe that makes a difference for our mental health patients who come to our office. They tell us that all the time: "Gosh, you gave us hope. I have a reason to live now. I'm not alone. I'm not the only person." There's somebody walking this journey with them, in other words.

Sometimes a patient will come to us with questions. It doesn't mean they haven't been given all the information and haven't been treated well, but because of the nature of their illness, they're suspicious; they're paranoid; they don't trust what's happening. We can provide that independent voice to say: "You know what? We've looked at it, and everything is in order. If you have any questions, come to us." It seems to me that might be helpful for seniors as well.

The Chair: Any other questions?

Ms Pastoor: If you don't mind. One of the things that I've been working on for the last four years, too, is the accountability. Again, I'm speaking from my experience within the geriatric side. Protection for persons in care: they can come, they can talk, they can make recommendations, but they truly don't have any authority, so it's sort of basically not worth the paper it's written on. How does the advocacy part work in line with that?

Ms Harrison: Well, we make recommendations. We make them directly to the facility, write the report, provide the rationale, and say: "Here's the recommendation. Please respond to me within so many days about how you're going to comply with that and address the recommendations." And they do. I follow up to make sure they do. If I'm not satisfied with what they say they are going to do, I will go back to them and say: "It's not quite the measure I'm looking for. I would expect more." If I have made that recommendation and that fails to achieve the outcome that I feel strongly must be achieved or I wouldn't have made it, I can go to the Minister of Health and Wellness.

2:50

Ms Pastoor: If you would decide with your investigation that there may actually be a criminal, do you have the ability to turn to the police?

Ms Harrison: That's a good question. We certainly would. We certainly would, yeah. It hasn't come up, but we would.

Ms Pastoor: Of course, again, I'm on the geriatric side, thinking that often the abuse that we see is by the family to family members and more often than not on the financial side, which in essence can be theft. Then it's criminal. So I'm just wondering if you sort of had any power like that in terms of the criminal side.

Ms Harrison: Well, we don't have any powers on the criminal side, but also at this point our jurisdiction is limited to those patients who are in the hospital, and it's around their detention, care, and treatment.

The Chair: Okay. Well, I'd like on behalf of the committee to thank both of you for being here today and for a very thoughtful submission and presentation. It's much appreciated.

Ms Harrison: Thank you.

The Chair: Thank you.

Good afternoon, Mr. Hochachka. Am I pronouncing your name correctly, sir?

Mr. Hochachka: That's pretty good.

The Chair: Okay. We'll try it. Tell me in half an hour how I'm doing.

Mr. Hochachka: Okay.

The Chair: It's a pleasure to have you here. Thank you very much for your written submission on Bill 24, and thank you for being here today to speak with the committee. I noticed you've been observing, so you're probably familiar with our little routine, but we'll just take a moment. I'd like each member to personally introduce him- or herself to you.

Ms Pastoor: Good afternoon. Bridget Pastoor, Lethbridge-East.

Mr. Quest: Afternoon. Dave Quest, Strathcona.

Mr. Dallas: Cal Dallas, MLA for Red Deer-South.

Mr. Olson: Hi. Verlyn Olson, Wetaskiwin-Camrose.

Dr. Sherman: Hello. Raj Sherman, Edmonton-Meadowlark.

Ms Notley: Hi, there. Rachel Notley, Edmonton-Strathcona.

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

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

The Chair: I'm Fred Horne, I'm the MLA for Edmonton-Rutherford.

We have about up to 30 minutes available. As the clerk discussed with you, we try and divide it between a 15-minute presentation and then some questions and discussion.

Mr. Hochachka: Something like that.

The Chair: The clerk will let you know when there's about five minutes left in the presentation side, and we'll go from there.

Fred Hochachka

Mr. Hochachka: Okay. Well, my name is Fred Hochachka. I'm a retired lawyer. I retired in March of this year, so that means I've practised during the entire period of the present Dependent Adults Act. I was at the first seminar that was held by lawyers on that act, and I still distinctly remember numerous lawyers coming in there and sharpening the pencil and taking serious notes about what's required under this act: ta-da-da-da, what we have to do, what we do, ta-da-da-da, and so forth. Alas and alack, those notes didn't help them very much because whenever they had to do an application under that act, as I found out when I did them, those notes were insufficient. You had to read the 30 or 40 pages of the act, and then you had to pull out the regulations and read them again and check to see that they were up to date in case there were some amendments that you missed, and then you would see whether you could fit your application within the four corners of that act and those regulations.

As well, I have a daughter that's 45 years old and fully, totally dependent. I might say that when she first turned 18 some 27 years ago, that was in the early days of the Dependent Adults Act. The public guardian's office, which was then created under it, was very much in the habit of sending out correspondence to every handicapped person that turned 18 urging them: "Let's get you a guardian. Let's get you a guardian." When we got that from the public guardian's office, my wife and I looked at it and gave it some consideration and decided we weren't going to apply. We thought we could continue to look after her without a formal court appointment – we have continued to do so to this day – and I don't foresee doing it as long as either I or my wife or both of us are alive.

Finally, one more thing I should mention in connection with that act. No. There are two points. The first is that my perception of the stance of the court for the last approximately 10 or 15 years and maybe more – I don't know exactly when they developed it – was that when you bring an application under the act to a judge, he first asks you: is there some other way you can handle this situation without a formal court appointment? If there is, he'll generally turf you out, you see. That's the first one.

The second point that I was alluding to I should maybe bring out. In my experience – and it's only my limited experience – of the people that came to me to launch an application for trusteeship or guardianship, more than half of them, most of them, I managed to deal with without an application. In other words, when we had some discussion and we looked at the facts and looked at the situation, there were ways of handling the matter of the care for the dependent person without the necessity of a formal court trustee or guardian. That's my perception of it.

I come here today not to argue with any particular point or section in your proposed bill but to tell you that, in my opinion, this bill is bad, bad, bad. It's way too long. Way, way too long. What you need in this area of the law is a clear, concise statement. My suggestion is that you give the jurisdiction to the court in an unfettered way to decide the serious questions that have to be decided and give the applicants a simple method of getting there. Instead of creating a new method under your legislation, go back to the *Rules of Court.* We have had a thing called an originating notice of motion for over a hundred years in this province. Every first-year law graduate knows about it. I don't say first-year student because he may not have read the *Rules of Court* yet, you see. Every lawyer knows it. He doesn't have to study anything.

You heard the lady here from Bennett Jones say what has to happen if you hoist this act upon her: what she has to do when an application is brought, when someone comes in inquiring about an application. She has to read the 89 pages of the act and the 15 or more pages, whatever the number comes to, in the regulations to make sure that she can fit herself within that provision. I'm saying that none of that is required. You need a simple statement permitting the judge to make the decision on capacity, permitting the judge to make a decision based upon the best interest of the dependent person in respect of whom the application is made, and permitting the people who will be making the application to do it in the simplest way that's available. I say that that is under the existing court document of the originating notice of motion.

Now, you might say: "Whoa. You're a lawyer. We want ordinary people to be able to do it." Well, do you think for a minute that an ordinary person is going to be able to plow through 89 pages of this proposed bill and the additional pages of the regulations to determine whether he or she can make an application? I don't think so. If you do what I'm suggesting you do, yes, an ordinary person can do it. I can explain to an ordinary nonlawyer what an originating notice of motion is in a matter of 10 minutes. He or she could then go ahead and launch their application if they wanted to do so on their own.

Now, most people don't. Even if they know what the document is, they're not familiar with the process. They're not familiar with the courts. You know, we lawyers have this expression that he who is his own counsel has a fool for a client. You probably have heard that one before or words to that effect.

3:00

But it's true. Most people don't want to do the application themselves, but they could. If you did this, they could. If you pass this type of legislation, scale it down to that kind of thing, to the bare essentials that are required, you will be doing a service for the people that you're talking about here, starting with the dependent person, who is not going to have to pay exorbitant fees for lawyers to study 89 pages of statutes, and also for the people that are making the application as well as the lawyers who are making it for them. You'll have done a service for all those people. By passing this existing bill as it is, you're doing a disservice to the very people you're trying to help, and your intentions to help them are all over that bill. It's apparent, you know. I can see that all over the place, but unfortunately it doesn't achieve it. You don't achieve it. You're making it harder rather than easier.

The existing Dependent Adults Act is enough of a disaster in itself, but you're multiplying it by two or three. When I say 89 pages in the copy that I got from the Internet, it was 89 pages to the transitional sections. That's the reason I call it 89. Well, whatever is required is required. That's sort of automatic. I don't think the Dependent Adults Act is more than about 30 or maybe 35 pages, something like that, you see. So here we are. That's basically what I'm trying to get at.

I'm asking you to scale it down. Like the lady from Bennett Jones says, streamline it. Well, the way to streamline it is to give the judges the jurisdiction that they require. Don't predictate to them what evidence they need. They know what evidence they need to

make the decisions that are required of them. You don't have to dictate those to the party making the application because he'll shortly figure it out. You know, if I'm an ordinary person making an application to declare somebody incapable of managing his own affairs, it doesn't take much intelligence on my side to figure out that I'm going to have to have evidence of incapacity. Where am I going to get that? The most likely are the professionals that have dealt with this person and can say so. So I'm going to have to have cogent information on that.

I request that you shorten the thing and put the method of doing the application right in the act, make it clear, and I'm asking that you don't try to outdo the courts. They have developed these procedures over many, many years. The originating notice, for example, has been in our province for in excess of a hundred years and probably in the English system for maybe 200 or 300 years. It can't be improved upon. It's there. If you need some amendments for some particular aspect – for example, the so-called desk orders that are made by our judges now – that can readily be made. That kind of a thing can be thrown right into the act, and you have it.

That's basically my submission. I'll answer any questions.

The Chair: Okay. Thank you, sir.

Any questions from members of the committee?

Mr. Olson: Well, I just can't resist making a comment, which is to thank you. You've provided us with kind of a bookend. We've heard a great variety of arguments as to how much government should intervene in people's lives and how much people should be responsible for their own lives. I really appreciate the comments that you've made.

I do have a bit of a question about your own personal experience, and you could just tell me it's none of my business, but I also have encouraged people over the years not to make needless applications. I have also had judges say: well, why are you doing this? Trusteeship applications become the most difficult, in my experience. The guardianship application becomes necessary when somebody needs to move into long-term care, and the placement people say to the kids because the parent is maybe vulnerable at this point and not able to make decisions: well, the person isn't going anywhere unless you get a court order. So that's kind of a point where it becomes necessary.

In terms of the trusteeship, if the person has assets of any substantial amount or any significance, certainly land, then it becomes necessary. I'm kind of wondering how you managed to dodge the bullet all these years.

Mr. Hochachka: With my daughter?

Mr. Olson: Yeah.

Mr. Hochachka: Well, of course, she has no assets. She was born this way, you see.

Mr. Olson: But everything will come home to roost at the time you and your wife aren't here anymore.

Mr. Hochachka: Oh, I know. That's why I have more than a passing interest in this thing. Someday, assuming my daughter survives me, someone will be looking at this legislation. Well, I wouldn't guarantee it. I'll take a run at avoiding it even then, but it may not succeed. You see, I may not succeed.

Mr. Olson: Thank you.

The Chair: Ms Pastoor.

Ms Pastoor: Thank you. Thank you very much for that pretty clear presentation. My question. Part of this bill – and it's the part that I'm quite excited about – is the actual personal directives that people can write. Again it's a personal question, and again you don't have to answer if you're uncomfortable with it, but what kind of a personal directive have you left to name the person that would look after your daughter? How comfortable are you that they will look after her in the way that she's been cared for all these many years?

Mr. Hochachka: Do you want a truthful answer or a euphemism?

Ms Pastoor: Go for the truth.

Mr. Hochachka: The truthful answer is that I haven't. I'm hoping to last a few more years, and hopefully I may do something in order to avoid the ultimate application, you know, at the end. Other than that, my intention is to rely upon some relative or friend taking the position of guardianship, not as the caregiver but as the guardian who arranges the care. My wife and I have some such people in mind already, but, you know, that can change with time. It becomes a real problem.

Ms Pastoor: Of course it does, and it becomes exceedingly emotional. I am a geriatric specialist, so I do have a bit of experience. Maybe I would just suggest that you read the personal directive part of this and get it done.

Mr. Hochachka: Well, I hope you don't pass it. I still hope you don't pass it because I think it's going the wrong way. It's the wrong way to go, you know.

Ms Pastoor: But I think you're talking about a different part of it. The personal directive part is where the person is capable and actually writes down what their wishes are to be and names the person that they can trust to carry those wishes out. There are a couple of things here that I think we're talking about.

Mr. Hochachka: Well, the thing is that the personal directives have their authority in the Personal Directives Act, not in your act, you see. I totally agree with the lady from Bennett Jones that that enabling legislation that you have there in the first two divisions of your act in my opinion is totally unnecessary, and it's going to be rarely, if ever, used.

You have to consider that if I am out there helping my neighbour or my relative who is losing capacity and who may have limited capacity, I'm not going to run to any lawyer to see if I can get a written document from him enabling me to help this person. I'm going to carry on with that help as best I can without anything more, and that's what she was saying. So you'll find that that's not going to be used, but it's sitting there at the front of the act. Whenever I have to make an application, I have to plow through all that also to see that it doesn't impact upon the application that I have to actually make. That's why I say that it shouldn't even be there. Don't put it in there. But the effect of the personal directives and the effect that's to be given to them should be right in the Personal Directives Act.

3:10

I might say that I have never been involved in preparing personal directives as a lawyer. I have heard of them. I've read the act. It only came out fairly recently in my practice, and I avoided it like the

plague because I didn't fully understand the provisions in there. I think that over a period of time they will gel and will become a little more understandable. But that's where the nuts and bolts have to come from, the Personal Directives Act, not your act.

The Chair: Well, I think that concludes the questions from members, Mr. Hochachka. I want to thank you again for coming and for the straightforward presentation.

Mr. Hochachka: Thank you, Mr. Horne, and thank you all for listening to this unrehearsed sort of presentation.

The Chair: It was our pleasure. It was an excellent presentation. Thank you, sir.

We're going to need about a five-minute break to make telephone contact with the final presenter, so if you care to stretch your legs, we'll reconvene in five minutes.

[The committee adjourned from 3:11 p.m. to 3:13 p.m.]

The Chair: Hi, Ms Renton. It's Fred Horne speaking.

Ms Renton: Hi, Mr. Chair. How are you?

The Chair: I'm very well. Thank you. How are you today?

Ms Renton: Not too bad. Thanks.

The Chair: Well, thank you very much for joining us from Lunenburg.

Ms Renton: Yes.

The Chair: We're all here. I'll just explain a couple of things before we start. In a moment I'll ask the committee members to just quickly introduce themselves. We've allotted up to 30 minutes per presenter, and as the clerk probably discussed, we'd like to divide that between, say, up to 15 minutes for any comments you would like to offer, and then that will leave us about 15 minutes to ask some questions and have some discussion with you. Is that all right?

Ms Renton: Yes. By all means.

The Chair: Okay. So we'll just quickly go around the table and introduce my colleagues.

Ms Pastoor: Good afternoon. My name is Bridget Pastoor. I'm the MLA for Lethbridge-East.

Mr. Quest: Hello. Dave Quest, MLA for Strathcona.

Mr. Dallas: Hello. This is Cal Dallas, MLA for Red Deer-South.

Mr. Olson: Hi. Verlyn Olson, the MLA for Wetaskiwin-Camrose.

Dr. Sherman: Good afternoon. Raj Sherman, MLA for Edmonton-Meadowlark.

Ms Notley: Hi there. It's Rachel Notley, MLA, Edmonton-Strathcona.

Dr. Swann: I'm David Swann, Calgary-Mountain View.

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

The Chair: I'm Fred Horne, MLA for Edmonton-Rutherford.

Please proceed, Ms Renton.

Bea Renton

Ms Renton: Thank you very much, and I wanted to thank you, Mr. Chair, in particular and the committee members and staff for the opportunity to address you regarding Bill 24. My comments are very short in nature. I certainly won't take up your half-hour time allotment unless you have some questions of me.

First off, I wanted to commend you for your work. I think it's a very important legislative review that you're doing. I've been involved in similar processes myself, and I know it can be very time consuming, very detailed work to make sure you include all the necessary elements. I certainly hope that your efforts will be well received by the Legislature. They certainly will meet the needs of some of the most vulnerable and deserving Albertans.

I have previously, of course, made a written submission to you, and I won't read that unless you want me to. I presume that all the committee members have that.

The Chair: We do.

Ms Renton: Okay. Instead, what I did want to do is reiterate my support for your public consultation process, that I hope will lead to the prompt adoption of this bill by the Legislature.

While I am no longer a resident of the province, I was born and raised there, and my father and extended family continue to live there, so I am still very concerned by the matters that you're dealing with today. In my father's particular case the bill would hopefully enable nonresidents to be considered for trusteeship. On this point I would ask the committee and Legislature to facilitate such trusteeships by providing a clear review process for current orders. Because I am a nonresident, my father's trusteeship is currently with a private third party. This has involved, in my opinion, a lot of unnecessary expenditures and complexities for the handling of his affairs. I seek some assurance that I'll be able to effect such a review under the act and the regulations that I know will hopefully come following the adoption of the bill.

However, in the case of his guardianship I am able to be his guardian as a nonresident, and I am in that case entrusted with his day-to-day care arrangements and needs, which seem to be even more pressing and geography to be even a more critical issue than a trusteeship situation would be. For that reason it would be very helpful in my family's situation for that inconsistency to be addressed through your bill.

Again, I just want to wish you well in your work, and I remain confident that your good deeds will be recognized with the adoption of the bill by your Legislature. That's the end of my remarks.

The Chair: Okay. Well, thank you very much. Just in response to the specific issue you wrote in about, I think we can – correct me if I'm wrong – assure you that there is provision in the bill for nonresident trustees. You should certainly have that opportunity when the bill moves through the process and is proclaimed.

I'd just invite any questions or comments from the committee.

Ms Notley: I have a quick question which you may or may not be able to answer. I know you are not, obviously, the trustee now, so you may not be able to speak to the time that goes into being a trustee, but in the event that you feel capable of estimating that

based on your conversations with the trustee, how would you say the effort and the time breaks down between your role as guardian versus your role as trustee in terms of your own commitment?

Ms Renton: Well, often in my role as trustee it's done in pockets of time when I travel out to see my father and spend an extended period of time with him, but day to day when I'm back in Nova Scotia, I don't have those same responsibilities. Certainly, the initial set-up of the guardianship – my father was not in a good physical situation at the time when we invoked the guardianship and trustee application – took a lot of time. It was all-consuming. Now that those care arrangements have been put in place, the day-to-day demands are not as great.

Certainly, with trusteeship there are responsibilities as well. However, my approach to try to facilitate the private trustee handling of his legal and financial affairs is very different from how they handle it. Of course, they're in the business of liquidating all assets, which I feel in my father's instance is contrary to his best interests, because it's much easier for them to manage liquidated assets, be it property or investments or whatever, and just put them into simple GICs. I don't think that's in my father's best interests, so I have a very interesting relationship with the trustee, who's been quite patient with me in dealing with some of those things because I am at odds with them.

3:20

From an external sort of position I do have some input, or as much as they'll allow me, in the handling of his affairs. I think, as I say, they approach it very differently, and on an ad hoc advocate basis I've had to step in numerous times to advance what I think my father would want to have happen to his assets, so the time that they spend is probably greater in having to deal with me as a result. I don't know if that answers your question.

Ms Notley: Partially, and you also raised some other interesting issues. Thanks.

Ms Renton: Okay. Thank you.

Mr. Olson: Hello. Thank you for your presentation. I have a quick question, too, relating to the bonding requirement. That's the way this legislation is proposed at this point.

Ms Renton: Yes.

Mr. Olson: So the good news is that you can be a trustee. The bad news is that you have to be bonded.

Ms Renton: Right.

Mr. Olson: I'm just wondering whether you have made any inquiries into that process. Do you have concerns about that part of it?

Ms Renton: Again, that's another very good question. I haven't yet because while it's an option here in Nova Scotia, as you noted, it isn't yet in Alberta, so I'm not sure of the process. I have talked to friends who practise in the estate law area in Nova Scotia, and they assure me that, you know, there's little difficulty in acquiring the bonding in Nova Scotia. I would only hope that that's the same in Alberta. It would be interesting to know, though. I think that's a very valid question.

Mr. Olson: All right. Well, thank you. I have some limited experience with it, and it would certainly be my hope, too, that the process isn't too cumbersome.

The Chair: Thank you.

Anything further?

Dr. Sherman: Ms Renton, it's good to hear from you. Your scenario will be all too common with the mobile workforce that we have. In fact, there are probably a lot of grandparents living in Nova Scotia, and their kids are over here right now.

Ms Renton: There are a lot of Albertans who are in Nova Scotia.

Dr. Sherman: I wonder if we can get a idea – it's great that you're involved in your father's care, and I wish more people were – what the costs associated with this trusteeship are from minimum to maximum from what you've experienced, just to get an idea.

Ms Renton: Right. The court did approve a particular fee based on a proposal that Royal Trust put forward. I think it's less than 2 per cent, if I recall. But, again, therein lies the conflict at times. It depends on how they value the estate. If there are assets such as real property that haven't been liquidated, they haven't previously to the best of my knowledge – they do have to present me with an account statement for the year, so they may have changed things. In the past they hadn't been putting the percentage fee based on the real property value aside from the assessed value. As I say, their interest is in liquidating the property – it's quite valuable – and then they would be able to realize their percentage fee based on that full sale value, and they'd be much better off.

I did note in the act that you indicated that there might be in the regulations, I think, a range of fees. I think that's something that will be of interest to anybody, what the court might approve for that process as well. But I think the range of fees for Royal Trust also depends upon the value of the estate. Over a certain amount it actually, I think, tends to decrease.

Dr. Sherman: Thank you.

The Chair: Thank you.

If there's nothing further, then, I'd just like to thank you again, Ms Renton, for taking the time. Your input is very helpful to us, and we certainly appreciate your interest all the way from Lunenburg. Our best wishes for your father as well.

Ms Renton: Thank you very much for all your work.

The Chair: Okay. Thank you.

Ms Renton: Have a nice day.

The Chair: You too.

We just have a couple of items to finish up with, and then we'll be finished early. I have one item of other business. I just ask: is there any other business any member would like to raise?

The one item I have I mentioned two meetings ago, I think. I have received a number of requests from organizations to appear before the committee to talk about various topics not connected with the bill that has been referred to us. Under Standing Order 52.08(1) the policy field committees have the ability to hold public meetings to hear such presentations, so what I'd like to propose is that prior to the next meeting I'd like to provide the committee with a list of the requests that I've received so far and ask you to take a look and

think about which groups you might be interested in hearing from. Then we will poll you about a couple of dates, perhaps in November, sometime after our report on Bill 24 is due in the Legislature. We'll set aside some defined time to hear these requests as well as any additional requests that may come in.

I have a feeling that because of the nature of policy areas under the committee, we're going to receive these sorts of requests on a regular basis. I'd like you to think about, as a proposal, the idea that we might allocate one or two times during the calendar year where we specifically use that time in order to hear these presentations. These aren't going to require a report from the committee back to the Legislature. These are just opportunities for organizations and members of the public to have contact with us on issues of interest to them.

If that proposal for handling this is acceptable, that's what we'll arrange. We'll start by getting you the list, and we'll think about a couple of dates and consult you on those. Some of these go back to when the standing orders were revised, establishing the committee, so some of them are getting a little old. I have been in contact and told them that the committee clerk would get back to them with a response to the request, but a bit of time has gone by. So I'll follow through on that.

Dr. Swann.

Dr. Swann: Thank you. Just a quick follow-up. Clearly, part of what we would then need to consider is letting all groups in Alberta know that we exist and that we are under consideration for depositions from various groups across the province so that it's not only a preferred group that actually hears about the opportunity but that everyone be aware that this committee exists and that there may be an opportunity for them to present on the various issues related to health.

The Chair: Well, I think the existence of all of the policy field committees is, you know, public information and is made available. That's the job of the Legislative Assembly Office. There is the external website as well as the internal one for members, so I think it's pretty well advertised that we're here. The contact information for the committee is on the website, and that's through the clerk. All of our names as members of the committee are listed along with links to our biographies, so I think we're out there. I'm not sure what further would be appropriate for us to do.

Dr. Swann: Is it clear on the website? I don't know the answer to this. Is it clear on the website that we are open to being approached, that we don't necessarily have to enlist or engage people, that people can initiate from the other side? I haven't seen the website, so I don't know.

The Chair: Do you want to comment on that, Karen?

Mrs. Sawchuk: Mr. Chair, actually, I've looked at these websites so often that you don't really notice a lot of the information. The external site lists the committee's mandate: very clear, concise. It is basically the wording that's provided in the standing orders, so it sets out, you know, the areas of interest for this committee. It has a direct link to *Hansard* transcripts. It has a direct link to our meeting schedule. The members are actually shown right on the home page. If you click on your name, it brings up biography information, contact information. There is also a link for other contact staff. It refers to what the committee is working on, so there's a huge banner on the site for today. It shows: public hearing on September 10. It says: download public hearing schedule. All of that information is there, and we try to maintain it on a very current basis, but I guess that specifically, no, we don't say: the committee invites submissions that you may want to make.

3:30

The Chair: It would be a decision of the committee, too, Dr. Swann, as to which groups they wanted to hear from. I'll certainly bear that in mind and maybe talk to some of the other chairs about it as well and see if it has come up in their committees. I can assure you as chair that anyone that writes to me or writes to the clerk is going to get a prompt reply.

Dr. Swann: Yeah. I guess it's just the first time in all of these policy field committee meetings that I have heard the statement that we are open to submissions from various groups. I always have assumed that it would come from the Legislature or from within our group that we would set the agenda. Now I'm hearing that we are open to having initiative from the public, which is a very welcome thing, it seems to me, if we're trying to be an open and transparent government, a welcoming government.

The Chair: Yes. What work we do is specified, though, by the standing orders in terms of priority, so the precedence is that the matter is referred from the Legislature. The other routes include a ministerial referral to the committee to look at a particular topic. I'm sure you're aware of this. We have to exercise some prudent judgment in how we plan our workload and our time.

Dr. Swann: Absolutely. My message is only that we are suddenly, I think, being more clearly aware that we are an open and transparent government by saying to people: you can initiate from your side; you don't have to wait for a public request or an initiative of the Legislature. That's news to me. I think it would probably be news to most Albertans that they can initiate a request to appear at this committee. I don't know.

The Chair: Well, thank you for pointing that out.

Just in closing, then, the next scheduled meeting is September 24. I'm sorry; I've lost the time that the meeting begins.

Oh, I'm sorry, Rachel.

Ms Notley: That's okay. I just had a quick clarification. Maybe this is what you meant in terms of your overview of the process, but just to be clear: you'll send out the list of who has requested to appear and maybe even suggest some dates, but we can have an opportunity to actually discuss that in the committee setting once we've looked at who's on the list, how many there are, and what our schedule looks like.

The Chair: That's exactly what I'm saying.

Ms Notley: Okay. Good. I just wanted to make sure. Thanks.

The Chair: I wanted you to know how I was managing that – okay? – subject to your approval.

Our next meeting is September 24. We scheduled the meeting from 9 till 4. Needless to say, if we don't need all the time, we don't have to use it. The plan for that meeting would be for staff to bring forward a document summarizing the key issues that have been raised, both through the presentations and through the briefings we've received. We'll try to make it a little more informal, if we

can. The challenge for us, then, will be to sort through that list, look at what might need to be added, and sort of determine what the key areas are we would like to focus on in the report. That will give the staff some direction in terms of drafting, and it will give us a discussion agenda for future meetings on the specific content. That's how I'm proposing to proceed, if that's acceptable to everyone, keeping in mind our deadline of the end of October.

Dr. Massolin.

Dr. Massolin: Yes. Thank you for that instruction. I was wondering if there's anything else that the committee members might want us to look at in preparation for that meeting, in addition to this document you have mentioned.

The Chair: Well, we did request some additional information from the Mental Health Patient Advocate on the overlap question and also from the Department of Seniors and Community Supports and the Public Trustee. Should you feel you have anything to add to what you've already provided, which has been very helpful – are there any other areas where additional briefing would be helpful?

Mr. Olson: This wouldn't be briefing, but there were several other interest groups that wanted to provide us with information. I think you mentioned you were working on one of them, and the other was the north Alberta branch of the CBA.

The Chair: I don't have anything in addition to the CBA north. I think I made mention to the Royal Bank because they brought up a few things that weren't in their brief. Given the technical nature of some of those, maybe they'll write them down and it'll be of assistance.

Anything else that anyone would find helpful? Okay. I think that's everything. Before we close, I wanted to thank the staff in particular. This was a very full day, and there was a lot of information provided to us, a lot of co-ordination as well in terms of the video conferencing. On behalf of the members we really, really appreciate the work that you do and realize we're not the only committee that you're resourcing. Thank you.

Thank you to the members. I think we had a very good discussion on a number of issues. From this vantage point, anyway, we seem to be working together very well. I appreciate all the co-operation for the clerk as well as myself.

With that, can we have a motion to adjourn? Mr. Dallas. Those in favour? Opposed, if any? Thanks a lot.

[The committee adjourned at 3:35 p.m.]

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