LEGISLATIVE ASSEMBLY OF ALBERTA

Title: **Monday, May 30, 1988 8:00 p.m.**

Date: 88/05/30

[The House resumed at 8 p.m.]

[Mr. Deputy Speaker in the Chair]

MR. DEPUTY SPEAKER: Would the Assembly agree to reversion to Introduction of Special Guests?

HON. MEMBERS: Agreed.

MR. DEPUTY SPEAKER: Opposed?

Hon. Member for Chinook.

head: INTRODUCTION OF SPECIAL GUESTS

MRS. McCLELLAN: Thank you, Mr. Speaker. It is my distinct pleasure to introduce to you and through you to members of the Assembly, a great bunch of gals from all over Alberta, the Women of Unifarm. They have come tonight to make a presentation to the agriculture caucus, and we would like them to know that we appreciate very much them taking time at a very busy season to come and do this.

I would like to introduce them to you, and I would ask that they would stand and remain standing until we can acknowledge you all: the president, Mrs. Margaret Blanchard from Bow Island; first vice-president, Mrs. Louise Christianson from Sedalia; second vice-president, Jacqueline Galloway from Fort Saskatchewan; secretary, Willow Webb from Edmonton; directors, Mary Lue Blakley from Grimshaw, Ruby Ewaskow from Thorhild, Jennifer Bocock from St. Albert, Mary Newton from Irma, Janet Walter from Red Deer, Mary Wright from Delburne, Karen Gordon from Hanna, Kate Homer from Pollockville, Sonja Hudson from High River, Elizabeth Olsen from Bow Island, Joyce Templeton from Lethbridge, and Judy Pimm from Grimshaw. I think I have them all. Thank you, ladies.

head: GOVERNMENT BILLS AND ORDERS (Second Reading)

Bill 29
Mental Health Act

MR. M. MOORE: Mr. Speaker, may I add my congratulations to those of the hon. Member for Chinook for the very fine work that the ladies who are visiting this evening do for all of us in Alberta.

Mr. Speaker, this evening we are looking at Bill 29, the Mental Health Act. It gives me a great deal of pleasure to move second reading of Bill 29. As members know, Bill 29 was preceded by Bill 3, which was tabled in this Legislature about a year ago for discussion purposes.

I want to first of all outline the reasons behind the Mental Health Act. Its major purpose is for the detention and treatment of people who suffer from mental illnesses and for their treatment and detention as involuntary patients. It is not purported that this Act covers all aspects of mental health, because for those who are suffering from mental illness and are not required to be involuntarily treated or hospitalized, there is indeed a host of measures and treatments available in our province that are not covered by this particular legislation.

The history of the Act, the development of a new Mental Health Act, Mr. Speaker, is lengthy. We began about four years ago the process of writing a new Mental Health Act, an Act that would have as its major components the provisions to provide necessary treatment and hospitalization to those who are suffering from mental illness and at the same time to provide to those individuals some respect with respect to their rights and freedoms as individuals under our Charter of Rights. So we set about, first of all, consulting with all of the major interest groups in our province and indeed with many people outside of Alberta to determine the shape and the nature of the legislation that we should be presenting to the Legislature.

It's never easy for any government or any individual to pass judgment on the kind of legislation that should be brought into force to deal with people against their will, and that, frankly, is what this legislation is all about. But we did have, I think, a great deal of success in developing, first of all, a consensus with respect to Bill 3 on a number of issues that are important to people who have been involved in the field of mental health as well as others who are interested in mental health. Bill 3 was not perfect, and we didn't believe it would be. But it was important that it was introduced a year ago so that we would have a focus for a number of discussion points. Members will note that Bill 29, which we tabled a couple of weeks ago and are reviewing tonight, has some substantial changes from Bill 3 in terms of some areas of principle that we thought were important after listening to all of the concerns which were expressed to us.

Before going through those, I would like to indicate to hon. members the facilities that exist in Alberta and those we expect will exist in the future that may admit involuntary patients that would be subject to the provisions of this legislation. As all hon. members know, Alberta Hospital Edmonton and Alberta Hospital Ponoka have for many years been the major mental health treatment facilities in our province. We now have added to those three hospitals in Calgary -- the Calgary General hospital, the Foothills hospital, and one of the Calgary District Hospital Group hospitals -- as well as the Royal Alex hospital here in Edmonton, the University hospital here, and the new Grey Nuns hospital. The latter three in Edmonton, while having been approved by the Lieutenant Governor in Council to receive involuntary patients, will not actually receive them until about mid-July, when their facilities are completely ready. It would be our intention, Mr. Speaker, as negotiations proceed with those hospitals, to move to providing for involuntary treatment facilities at a number of other regional hospitals throughout the province: certainly Grande Prairie, Red Deer, Lethbridge, hopefully Medicine Hat, Fort McMurray, and perhaps some others as well, depending upon the desire of the hospital board and the nature of the communities they serve.

The major principles in Bill 29 are to provide, first of all, for a method of hospitalization and treatment of people against their will -- involuntary patients. After having provided for those matters in the legislation, it is necessary to provide a significant number of safeguards to ensure that those individuals' rights and freedoms are protected. The first safeguard in new Bill 29 begins with a definition of what a mental disorder is. Members will note that the definition of mental disorder in Bill 29, Mr. Speaker, is changed substantially from the definition which existed in Bill 3. The new definition is commonly referred to as the Vermont definition throughout North America because it was first put into legislation in the state of Vermont. It has been used, as I understand it, in other states and perhaps one or two

other provinces as well in very recent years. That definition is substantially less inclusive of persons than was the previous definition we used. In other words, it would be a little more difficult, maybe considerably more difficult, to judge a person having a mental disorder under the definition that's in Bill 29 as opposed to Bill 3, again a change that reflects our desire to make absolutely certain that we don't write and pass a piece of legislation that will in some way put somebody into a mental health facility against their will when there was no reason for them to be there.

The other major principles that are involved in the Bill involve matters of appeal and the lessening of the time for which review panels will hear appeals from individuals who believe that they have been improperly hospitalized or, in some cases, individuals who have complained or do complain about the treatment they are about to receive. I wanted to refer hon. members to the sections of the Act that deal with treatment, because a number of people from the medical community have raised this matter in Bill 3, as well as the Alberta and Canadian mental health associations, and some have raised it again with respect to Bill 29. What Bill 29 says, Mr. Speaker, is that you or I, if confined to a mental hospital involuntarily, have a right to object to treatment. After having objected to treatment, we then have the right for our objections to be heard before a review panel within seven days. The question that arose in Bill 3 is that there was no right to object to treatment during that intervening seven-day period, and a number of people were concerned that patients might be treated against their will in a variety of ways that might not be approved by the review panel once they reviewed the matter.

So what we've got in Bill 29 is a compromise that allows a limited amount of treatment. Members can read section 30, which provides

> the authority to control a person . . . to the extent necessary to prevent serious bodily harm to the person or to another person . . .

And it allows the medical community to use

> such force, mechanical means or medication

as is absolutely necessary and reasonable under those particular conditions.

We then have provisions for that individual to appeal the proposed treatment to a review panel, which would hear the case within seven days and pass a judgment. Here I should point out that within the last two weeks a number of representations have been made to my office with respect to the review panel passing its judgment on the judgment of a psychiatrist who may wish to provide treatment, and the question is put: what happens if the review panel upholds the patient's right to refuse treatment? My response to that, Mr. Speaker, has been that the review panel is composed of a chairman and a vice-chairman, both of whom are lawyers. It is composed as well of one psychiatrist and one physician and one member of the general public. Now, I would hardly think that there would very often, if ever, be a case where a treatment was proposed by a psychiatrist, objected to by a patient, and then the review panel, which is comprised of another psychiatrist, a medical doctor, a member of the general public, and two legal people, would in fact uphold the patient's objection to the treatment and then have a case where the psychiatrist would suggest that the review panel was wrong. I have every confidence that we can select the kind of review panels that will overrule the patient's objection to treatment if that is something that's necessary to do. But the Act is structured so that it will, in my view, make it pretty certain that it's absolutely necessary to make those changes.

Mr. Speaker, before concluding, I wanted to mention one other very important aspect of Bill 29 which is a substantial change from Bill 3. For many years people in the field of mental health in our province and across Canada have been lobbying for mental health patient advocate offices to be established, an individual with appropriate staff and finances to be able to be an advocate for involuntary mental health patients. This legislation, for the first time in Alberta, provides for the establishment of that office. The alternative was to either have done without a mental health patient advocate and allowed the hospitals themselves -- and many of them do -- to provide advocacy services for mental health patients or to have expanded the role of the Ombudsman to include all hospitals which now and in the future might house involuntary mental health patients.

Our judgment was that it was important to have this aspect of an individual's rights highlighted by the appointment of an individual whose single and sole purpose, full-time, 365 days a year, is to be an advocate for involuntary mental health patients. So we took that decision knowing full well that there would be some concerns on behalf of the Ombudsman, who in the past -- and I speak not only of the existing Ombudsman but others -- has done an excellent job of looking after the concerns of involuntary mental health patients. But we took it with a view that this would strengthen even further the ability of an individual to ensure that all of their rights are protected under our legislation.

Mr. Speaker, I recommend to all members of the Assembly the support of Bill 29, the Mental Health Act, on second reading. Thank you.

MR. DEPUTY SPEAKER: Hon. Member for Edmonton-Centre.

REV. ROBERTS: Thank you, Mr. Speaker. It is with mixed emotions that we see and welcome Bill 29 and have an opportunity to debate it at second reading. I hope we have a good hearing from all parties and all members of the House who have interests in mental health legislation, as it is a very complex but nonetheless a very important area of health care.

Yet it seems, Mr. Speaker, that the lack of proper care, treatment, and rehabilitation, not to mention the lack of learning from people who have had a variety of mental disorders, is one of the sad legacies of our health care system. For too long we have continued to shun persons with depressive disorders or persons with schizophrenia or psychoses, dementia of many forms, and it continues to be a part of our social reality that they do not receive the care, treatment, and protection of their rights that they deserve. If they were to have been afflicted with some physical illness or ailment of some other part of their body, certainly they would have been accorded certain rights and care. Yet somehow we have this thing -- it's not unique to us; it's been throughout human history -- that people with mental or emotional difficulties tend to be shunned and ostracized.

Whether it is out of unwarranted fear or misunderstanding or feelings of being threatened by such people or even feelings sometimes of identifying with them, there has been throughout our history a great sad history of trying to hide away these people who are experiencing episodic or chronic mental illness. It seems to me that even our dragging our feet with respect to our own mental health legislation, I think, is part and parcel of our dragging our feet generally with trying to improve the care, treatment, and protection of the rights of those who have mental

health difficulties.

So we continue to see that sign saying Alberta Hospital Edmonton or drive by Alberta Hospital Ponoka or see the designated units that the minister speaks of in various hospitals, yet it does seem to be an isolated -- not asylum, as used to be the case, but certainly an area, an institution, where the concern and care and compassion of many others of us really does not enter. I think that's a sad indictment that we all need to look at in our own personal ways but, particularly as legislators, in our political ways.

Bill 29, I'm convinced, does go some distance in improving the rights of patients who have had mental disorders, in improving the protection of their rights and the protection of their families and as well, of course, striking that delicate balance between patients' rights and the rights of members of society. It does, as the minister outlined already, provide for better mechanisms for the certification of such persons in an involuntary way, for treatment orders, for appeal panels, for some sense of advocacy for them, and for the confidentiality of records surrounding their care.

But I really want to make the case tonight, Mr. Speaker, in terms of the principle about this Bill and about mental health legislation in general: that it's important, as we have, to learn a lot, but not just learn from the psychiatrists or not just learn from the staff and administration at mental health institutions or not just learn from the civil libertarians and the lawyers and the Canadian Mental Health Association people. But it seems to me, Mr. Speaker -- I really think that in principle we need to learn a lot more about what it is to learn from the experiences of those who are beginning now to speak from their own experience with mental disorders and not formal patients but former patients, patients who have had periods of institutionalization for mental illness and who are now beginning to speak out, I think, in very articulate and very clear ways that we need to pay attention to.

So in principle I'm not convinced that we have gone all the distance and that we've heard from them as we need and ought to on how they would like to see a mental disorders treatment Act or what they think from their own experience of having undergone treatment in a psychiatric institution -- how they would think that care and treatment could be improved. I think their voice still needs to be heard more clearly and heeded by legislators.

We certainly have learned a lot from the Drewry report and recommendations, and reports and recommendations that came to us in this province earlier than the Drewry one. We're learning a lot from what other provinces are doing with respect to mental health legislation and the complexity, the mine field that really is out there in terms of trying to walk a fine balance between a number of different, complex issues. I have learned extensively from the work of the Uniform Law Conference and from their uniform mental health Act, which of course is the basis of my Bill 221, which I think, Mr. Speaker, would go a good deal further to get to the point we need to be at and wish we could be there sooner. We learn also from the Law Society and others who are involved in the legislative process, but again it seems to me that on principle we need to learn also -- and again, I should say, more strongly -- from having former patients come and again be part of the legislative process and help us to understand what the best form of legislation would be, and not just get it all from legal minds or bureaucratic minds but from minds who have had the experiences of mental disorder but could now help us in improving them all.

As I said in Bill 221, which is on the Order Paper, Mr. Speaker -- I really thought that it would, too, be a much better point of departure, point of discussion than Bill 3 of last year was. I don't know what took so long to come through with some of the kinds of things I was suggesting in Bill 221. But I would think on principle that what we needed to have done was, as I have done in Bill 221, to set out, as the minister said, a better definition of mental disorder. The Vermont definition is a good one, but it can still be improved upon.

I'd like to have seen in principle some purposes for the Act. Now, the minister outlined some of the purposes, and it's good to know what he sees as the purposes of the Act, but it would be nice to have it clearly stated in the legislation what the purpose of the Bill is and not just the care and treatment of involuntary patients, but some of the broader questions with respect to mental health care and how that can be improved with legislation. We certainly needed far better protection against arbitrary measures for the client, for the client's family, and for society in general. Again, defining what would be in the best interest of the patient, I think, goes a long way toward giving us all a sense of that bottom line as to what treatment or what care or how we would all rule, always keeping in mind what would be in the best interests of the patient.

I suggested we needed to strengthen the patient advocacy service, as many others have said. Again, we're not convinced that what the minister has set up here at all gets to what really is necessary in terms of a patient advocacy service. To have an advocate who is, as I read it, a kind of mini-Ombudsman who is there to investigate complaints is not at all what I had in mind or what I think others of us have in mind in terms of a patient advocacy service which would be there in an ongoing way to help, advise, and consult at every step along the road, along the process with those who are involuntarily admitted. Patient advocacy service needs to be hand in hand with them in helping them through the very delicate mine field that's out there and not just be one person who, in the kind of a role of an Ombudsman, would say, "Well, I've received a complaint, so now I'll go and investigate that complaint" in a kind of a reactive sense. The advocacy service is really meant to be a proactive service which is there in much more of an omnipresent way. Indeed then have the Ombudsman as well have jurisdiction so that the Ombudsman could come in to investigate certain complaints as they might arise. So to have both and to twin those kinds of services, I think, would really ensure the level of care and treatment and the protection of the rights of people who are involuntarily admitted.

Then, as I say, I'd like to hear the minister use some of the language, which is to talk about the care and treatment of those suffering from mental disorders to be undertaken in the "least intrusive and restrictive" mode and environment. Those kinds of words and that kind of understanding of the least intrusive and least restrictive are really what we want to get at and what would help us both in the institutional care of mental illness as well as in the community care, and that's what we need to get at, Mr. Speaker.

So in principle there's really a number of things which I really would have thought that by this point we or the minister's own legal people would have had enough understanding of that they could have put in here in a much more progressive way and a much more visionary kind of way. Yet what we have is a kind of fallback position, which again can be acceptable but which is really not as far as we'd like to go. The problems which exist are still many, and I'm glad that we're going to have the time

throughout the second reading as well as in committee and third reading to be able to go clause by clause through this very important piece of legislation and to hear from members of the government party as well what their concerns are with respect to some of the provisions in the Bill.

I for one again would have preferred -- though it was perhaps just my sense that the public needs more education -- to have had Bill 29, when it was released, be accompanied by a far more extensive news release or background paper that could help members of the media as well as members of the public to have in lay terms a lot more of what the Bill's about and what it's intending. I think a single page that accompanied the release of such a weighty piece of legislation doesn't do it justice and that people who aren't going to wade through it clause by clause, as we are going to do, should have been served by having a more thorough background paper which could have outlined some of the intents and purposes of the Bill more clearly. I mean, we even had that with the amendments to the Public Health Act. It was very thorough in its background paper on just a few amendments. So I would have wished for that from the minister.

I'm not sure -- I guess we're all impatient to get on with it, but I still think it's somewhat early to have heard back. I'm sure the minister has in his office heard back from various interest groups and various players in the field, but it still would have been good to have gotten a more thorough discussion from some people and not just to have had the two or three weeks that we've had to this date, although, as I say, I am somewhat ambivalent about that.

With respect to certain sections of the Bill, Mr. Speaker, in principle it's going to be kind of hard to know how to deal with them, because they hit at some pretty central features of it. For instance, right away in section 2(b), it states that the admission and detention of a patient can be on a basis of them "likely to present a danger." I'm not sure at all if that's a weighty enough cause to be able to admit them, that they are likely to present a danger. Certainly again, as I said in Bill 221 -- it was very clearly laid out that proof needed to be there of bodily harm or a serious threat of major injury. It really needs to be very firm and very clear that the burden of proof is on those who are doing the admitting and not just with any sense of whether they're likely to present a danger. I'm sure, certainly, there are members of the Edmonton Oilers at that point or members of the Legislature who at times are likely to present a danger to themselves or others, but it's not cause enough to involuntarily admit them. So that needs to be strengthened much more, and again the language is already in Bill 221.

I'm not sure; I guess the debate will go on. I know the Member for Calgary-Forest Lawn has some concerns too, as I'm sure the Member for Calgary-Buffalo does, about the certificate needing to at least have one psychiatrist to sign it. Now, it seems that just two physicians is not enough and that certainly to have a psychiatrist or someone who really knows what's going on to be able to have some sense of the person passing that veil of involuntary admission needs to be done by people who have some real sense of it, more than just as is provided for in section 7(1) and (2).

Then, of course, I wasn't entirely clear how the minister responded to the representations for both the CMHA and the AMA with respect to what to do with patients who have launched an appeal and whose appeal or objection to treatment has been upheld by the review panel. Can they still be admitted, or can they still be kept under certification, or do they have a right to be discharged? If the right to treatment has been upheld, do they not then need to be of course discharged from institutional care? That's a very thorny issue which both the CMHA and the AMA have raised, and I'm not sure of the minister's response on that one.

Certainly section 29(5), Mr. Speaker, also presents a very thorny area. I'm not entirely sure how Ontario has proceeded with the override clause. But where the review panel's decision can be overridden by a second opinion of a psychiatrist, it sometimes seems to be not necessary; at other times, yes, it is necessary, needs to be in there. But that override provision is one that I think is going to take much further debate, both now and in committee stage. I think that in the experience of Ontario they didn't have it in for quite a while and tried to live without it. Perhaps we should have taken that course: we could not have the override clause, live a year or two, and see just how things proceed. Then if it's necessary, perhaps put it in down the road. But to take it and put it in now, I think, is a heavy hand and one that really, I'm convinced, is not necessary at this point.

I've already made the claim and the concern about the patient advocacy service. It's very thin, Mr. Speaker, part 6. I think the minister did even tell the members of the press and the media that he would table the regulations during debate in the Assembly on what part 6, the mental health patient advocate, was going to look like. We'd certainly want a lot more detail, whether it's in the regulations or, as we would have preferred, in the Act, to have more clearly outlined who's going to be involved, how thorough their involvement is going to be, and what roles they will be able to play. As I said, they need to be there in an ongoing way, an ongoing resource; not just a kind of mini-Ombudsman but rather a whole different mind set of a patient advocacy service that's going to be in there as part and parcel of the care and treatment. And also have the Ombudsman. We just disagree with the minister that the Ombudsman doesn't need to have a part to play. We really feel strongly that he does. Why not have that extra safeguard, that extra protection, and the ability, as the Ombudsman does, to have jurisdiction over boards that are under the Solicitor General and so on? I think it would be very consistent to have him continue to have jurisdiction here.

Then section 17, Mr. Speaker, also leaves things kind of wide open with respect to access to records. Section 17(6):

> the Minister, a board, an employee of a board or a physician may disclose any diagnosis, record or information relating to a person . . .

If they have those kinds of sweeping powers, I'm really concerned: for any purpose considered to be in the public interest. Now, is the minister himself going to try to be some Ombudsman, or can he go on a witch-hunt if he has some particular purpose that he deems to be in the public interest to get at some patient's records? We'd really like to have more clearly outlined what's in mind there and why it's left with such sweeping powers that any purpose considered to be in the public interest can be cause for getting access to these records. I think that's of great concern.

So, as I say, Mr. Speaker, it's certainly a very complex and weighty piece of legislation, as the minister has outlined his own sense of it. We're appreciative of that, but our general sense is that it doesn't go far enough. There are principles, but then there are also principles, and on second reading, we're not satisfied that the principle is based on the patient first. That's what I would certainly like to argue, though I wish it were a former patient who could be here to argue it for themselves because

that's what I think we need to hear. There's still too much reliance on a bureaucratic sense, still too much reliance on concern about the rights of others. There's still too much concern about backing away from the real voice and concern of the patient first, and I think that is the principle upon which this Bill needs to be based. As we say, it's a delicate balance, and that delicate balance is struck here more than we've ever seen it in the province of Alberta. For that we're grateful.

I suppose, then, in terms of it being at least in the ballpark, we will support it on second reading. It's a delicate balance, but I guess like I've often heard -- I've spent a good deal of other time in the good old Church of England, which was also called the fair flower of English compromise. Well, this may be the fair flower of Alberta compromise in terms of the delicate balance that it strikes, but we have to live sometimes within these unsatisfying but necessary compromises.

So, Mr. Speaker, I'd certainly want to encourage members from the government and the back bench and from the Liberal Parly -- I think they might have a thing or two to say about it -- and members of our own caucus to give this the thorough debate and hearing that it deserves and needs in this Assembly now and at committee stage. I look forward to that debate, because we need to really enter into that debate and do so for the benefit of those many Albertans who are experiencing and who have experienced mental disorders.

Thank you.

MR. DEPUTY SPEAKER: Hon. Member for Calgary-Buffalo.

MR. CHUMIR: Thank you, Mr. Speaker. This is an important piece of legislation. The test of any society is the way in which it treats those who cannot help themselves. The lawyer and the civil libertarian in me supports this legislation. The support is, however, qualified support because of a number of inadequacies. The primary inadequacy is the major omission of a true advocate system to help mental patients on the spot as needed. A second primary omission that I would refer to in opening is that of the removal of the Ombudsman's jurisdiction.

[Mr. Musgreave in the Chair]

Now, the legislation can be summarized as a generally progressive piece of legislation which does not go far enough. In this sense it's a missed opportunity after a very excellent report by the Drewry commission in 1983, which could have put us in the forefront of the mental health field. There are good features. There is generally more concern with respect to the rights of patients. This is not surprising; it is in fact mandated by the Charter of Rights. I approve of a number of things I would like to mention conceptually, although of course I have concerns with respect to the detailed proposals.

I am pleased to see the retention of admission criteria relating to a combination of mental disorder and dangerousness. Other proposed models would allow committal on the basis of the medical needs alone of the patient I can appreciate the desire of the medical profession and members of the family to require patients to be treated where they believe that treatment can help. In fact, I was in the middle of a very difficult and heartrending experience where that issue arose at one point of time. However, having been on both sides, I believe that models based on a simple need for treatment and allowing commitment on that basis are not appropriate. There's too great a danger of committal and a desire to treat in light of the state of uncertainty in the realm of medical knowledge in this area. Very much treatment is in fact experimental, and we keep in mind that the committal is tantamount to incarceration, as the minister so sensitively noted in his opening comments. So keeping those aspects in mind, it's clear that there is no perfect standard. Either standard creates problems, but I opt for the danger model, which is in this legislation.

Another area which I find to be of positive direction is the right of involuntary patients to object to treatment; I think that is very sensible. I like the provision for automatic review of detention by review panels every six months. I am pleased that there is a provision which provides that there shall be no psychosurgery on an involuntary patient unless the patient consents and a review panel approves. I would note, however, for the minister's comment that there is an ambiguity as to whether that particular provision applies only where the patient is competent to make the treatment decisions and not where the patient is incompetent to do so. I note that ambiguity because the provision with respect to psychosurgery appears in section 29(5), which is a section which deals with mentally competent patients generally, and that needs to be clarified so that it's clear that it covers the incompetent patients and protects them as well. I'm also happy to see provision for more expeditious time frames with respect to review panels.

Now, those are positive, but the major defects in the Bill are very, very significant ones. As I noted in opening, these relate, firstly, to the absence of advocacy assistance on a current basis and, secondly, to the removal of the Ombudsman's jurisdiction. Dealing first with the advocates, the Drewry commission in 1983 recommended that we implement an advocacy system in this province. Now, this is not a new concept. Many other jurisdictions have them: Ontario has a system of advocates; many of the states in the United States, such as New York, have these systems. The concept of this approach is to have an advocate in the facility, right on the spot to assist patients who are confronting a situation in which they are confused, often faced with force, frequently drugged, intimidated, and in a state where generally they need help right on the spot at the time of committal.

It's especially important -- and I say this not out of any professional interest -- to have quick access to a lawyer. Many commitments even in my personal experience are unlawful. I have been involved in a few situations in which the niceties of the law have not been followed, perhaps out of true but mistaken concern for the patient. I know of one situation that I was involved in where a patient was undergoing threat of committal by a doctor who wished to force treatment for a medical problem.

Now, the legal aid system, which one would have thought would be the proper system to deal with these matters, is not working well. It's not around when it's needed, and that's when patients are going through the commitment process. We need a system, I believe, not where lawyers are sitting around in facilities at all times, but we can have system where we do have lay advocates who are on the spot, in a position to explain their rights to patients, to mediate between the patients and medical people -- indeed, advocates are often thought of as mediators -- and to bring in a lawyer quickly if a lawyer is needed.

This is only the start, of course. There's an ongoing need for advocates where rights of patients are an issue in many instances. An example I might pick out is where the right to receive a visitor is denied, which is provided for in the legislation when it's allegedly a danger to the health of the patient.

Well, there are situations when visitors may be denied on the basis of providing punishment for misbehaviour rather than danger. So that would be a role that an advocate might play. The advocate might be called in to explain the review process, to explain medication rights, and also I might note -- a realm that shouldn't be neglected, I believe -- to help the patient with ordinary life problems which the patient can't handle from within an institution and in respect of which there may be inadequate family or friend backup to be able to assist.

Now, the need for this type of help is obvious. The humanity of providing it is so clear that its omission stands out and cries out for an answer as to why it has not been provided in the face of the very strong recommendation of the Drewry commission. I find this very, very unacceptable because the process that has been provided and is dealt with in part 6 is not, in fact, an advocacy system. I believe that part 6, in the use of the terminology, is in fact misleading. It's an inadequate system of after-the-fact oversight. The advocate is not truly an advocate. He or she would act like a court of appeal with respect to complaints. The advocate under that system, unless I'm terribly mistaken, is not intended to be on the spot. It's totally after the fact, and there will be inevitable delays. So it does not in fact serve the needs that I have referred to above.

Now, it's clear that there is in fact a need for the type of complaint system that is set up under part 6 to be dealt with by the so-called advocate, but that form of complaint process, I believe, is properly under the jurisdiction of the Ombudsman. It's a mandate that the Ombudsman had in the past. The current Ombudsman supports, indeed wants the jurisdiction, thinks that it's proper. Philosophically the jurisdiction should be exercised by an independent, yea, a fearless officer who reports to the Legislature. As it is, we have a so-called advocate who has no tenure, no security of office, and who reports to the minister and not to the Legislature. Now, this may not be fatal; the advocate may do a good job. But why can't we have something that's just a little bit stronger and little bit better, and provide for an advocate who has the independence and the broad mandate of the Ombudsman? Why have we moved away from the Ombudsman concept, which in fact is a regressive move? I believe that calls for some explanation.

I'm also concerned with respect to provisions relating to the access of patients to their own files. There is in fact a failure to make any change in the legislation with respect to the rights of access to files by patients, notwithstanding a recommendation by the Drewry commission that the present system was inadequate. It's done differently in other places. The courts in Alberta and indeed commissions elsewhere -- and I would cite the Ontario commission on health care of about 1980 -- have all reviewed and dealt with the arguments which are made against granting to patients the right to see their files. They have in fact found that most of the arguments don't stand up. There is one exception that they all accept, and that is the instance where there may be harm to third parties.

The existing process which is maintained -- and I've had experience with that process personally in attempting to get documents for patients -- is an inadequate process; it's frustrating, and it's unfair. You have the paradox that Alberta courts have said that patients do have a conditional right to get access to their files. The problem is that under the current legislation the institutions refuse to go along with that right. They say, "No," and the patient is left with no alternative but to go to court. So here you have a person with mental problems, as often as not almost inevitably impoverished, who usually can't get the legal help and doesn't know how to get the legal help. If he does get the legal help, he finds that it can't be advanced because it's so expensive, or it's time consuming, without the lawyer volunteering his time.

Now, the Drewry commission and the Ontario health commission have both reviewed the problems of similar situations they've looked at; in the case of Drewry he looked at the Alberta situation. They recommended a very simple process: if the institution wants to deny access to a file, the onus is on the institution or the doctor to go before either a review board, perhaps, or a court and get justification for that denial. If they don't get the justification, the file goes to the patient. It's a much fairer process. I can't understand, in the face of the recommendation of the Drewry commission and in the face of court judgments which have analyzed all of the arguments, pro and con, why we keep a system that is in effect cynical in its granting of a right to see the files and to get copies and then puts the often insuperable obstacle of going to court in front of the patient. I don't know. Perhaps the minister has not understood this matter before, but as I mentioned, I've been involved in a few cases. It's a dishonest system, and I think it should be changed.

I also note, Mr. Speaker, if I understand this legislation correctly, that it eliminates the Provincial Mental Health Advisory Council. I'd be very interested to hear from the minister why that is the case. The merit of that council is that it specifies representatives of organizations interested in the field of mental health, which gives a degree of independence to that entity. As I read section 50, there is a provision for mental health committees, but it gives the minister total carte blanche with respect to deciding at his discretion who the members are. So we lose that potential of independence.

Now, I just quickly note some other concerns about some areas that I think could be improved. Under section 29, in terms of where a patient is mentally incompetent to receive treatment, I believe a patient should be able to designate any [person] as a representative with respect to his treatment, not only members of the family, who may turn out in fact to be adversaries in interest. I have a concern with respect to the presence on review panels of psychiatrists. Not that I have anything against psychiatrists, but in the course of human nature, when you have a committee of an expert and three quasi laymen, everybody will look simply to the expert. I'd have preferred to see people with lesser specificity but listening to the experts.

There's no right in the legislation to adequate treatment; only provision for treatment that the staff, regardless of the quality of the funding provided for the staff or otherwise, can provide. I think we could perhaps make an improvement there. There's no right to independent psychiatric opinions in many circumstances where the patients are facing a very fundamental decision with respect to their freedom. There is a general inadequacy, as my friend has mentioned in his preceding speech, with respect to protection of privacy of records. However, these we can deal with in committee.

As I start to wind down, I would note what is obvious: that the Act, of course . . . [some applause] Who was that? From what direction was that applause?

The Act is, of course, important, but it only provides a framework. Without adequate operating policies and adequate resources, it will not provide an effective system for this province. So I would note that in this regard I am pleased to see at last, many years after multi recommendations and the desperate need, a designation of some local hospitals and plans for

more in order to minimize the need to send ill patients away from their homes where the support and families are located. That was indeed a very inhumane system.

But there still are some major gaps that need to be addressed, and I'd very quickly note them in order. Firstly, the element of child psychiatry in this province: it's a wasteland. The Fewster report has indicated this, reflecting the inadequacy of available services and the lack of co-ordination. Unhappily I sense that nothing is happening. The Minister of Community and Occupational Health can only feebly point to an obscure pilot study in northeast Alberta when he is asked what he has done. That is truly grasping at straws, and it's reflective of a scandalous neglect of the needs of our youth.

The second concern that I have is with respect to community services. We've gone through in the last 10 years or so a trend to deinstitutionalizing mental facilities. More mentally ill people are in our communities, and we unhappily have inadequate programs and accommoddation for them. We have to address this need before we face the situation that we hear about in Toronto and New York, where ill people are drifting randomly throughout the streets.

Finally, in terms of the psychiatric profession we are still suffering from a shortage of these professionals. It's better than before, but it's still not good enough. It needs to be worked on, because no program can be effective without qualified professionals.

So as I have noted, there is indeed room for improvement. Some of the areas are more fundamentally important than others. I urge the minister to give very close consideration to providing for a true advocacy service and restoring the jurisdiction of the Ombudsman. He would be providing a tremendous service and would perhaps go down in the annals of the history of mental illness as being one of the most progressive ministers this country has ever seen in that regard. He's close now -- close. Just a little bit more, and he'll be there. But generally, a progressive piece of legislation, and I look forward to voting in support of it

Thank you.

MR. ACTING DEPUTY SPEAKER: The hon. Member for Calgary-Forest Lawn.

MR.PASHAK: Thank you, Mr. Speaker. I'd just like to add to the consensus that's building up on this side of the Assembly that the Act does seem to go a long way to redress some of the situations that currently exist, but it could stand substantial improvement. In fact, I've heard someone say that it moved Alberta out of the 19th century, but we're probably not much past the 1840s in terms of ideal legislation that might exist in this regard in other areas. I think the Saskatchewan Mental Health Services Act -- by the way, it wasn't introduced by the New Democrats; it was introduced by Progressive Conservatives -- is a bit of a model for Canadian health Acts.

In any event I think the major problem with the proposed Act at the moment is that it's a long way behind in terms of respecting the rights of the mentally ill. Persons are still to be detained on the opinion of two physicians, neither of whom needs to be a psychiatrist. I think this carries with it all the potential for abuse, because there's not any necessary expertise represented with respect to the mental health problems in that situation.

Mr. Speaker, whatever rights of review are given to the patients may be meaningless, as there is little or no provision for objective representation on behalf of patients. I think both the previous two speakers mentioned that Although the minister of hospitals and medicare mentioned that a lot of the changes were designed with a view in mind to bringing the provisions of the Mental Health Act in line with the Charter of Rights and Freedoms, there still could be some serious shortcomings in that regard. For example, with respect to the protection of "life, liberty and security of the person," this may be violated in this Bill by the fairly automatic procedures of commitment and the lack of reasonable opportunities for a review that are not present in the Bill.

There's some question about who represents the interests of the patient, and as I believe the Member for Calgary-Buffalo mentioned, no legal aid is made available. When you look at the section on the patient advocate, it seems to me that at worst it could be just window dressing. Certainly that person would be overworked, so we may have a situation where it's both window dressing and there'd be no effective remedy through that provision.

Other charter sections that I think might have to be taken into account would be protections against arbitrary detention, the need to have rights to counsel, testing by habeas corpus. I'd like to know how these rights are protected under this current Bill. To satisfy some of the concerns I've just raised, I'd make the suggestion that there should be a statutory [inaudible] actionable per se for the release of private information without the patient's consent Remedies should include, among other things, damages, injunctions, professional discipline. Secondly, Mr. Speaker, there should be an independent body created to act as patient advocates. This should be a proactive rather than a reactive body. It should meet and discuss with patients, on admission, the patients' rights and responsibilities. These persons should have the authority to act for the patient in preparing for reviews of all certificates, and the means and authority to take matters to court, either to hire lawyers or they should be lawyers themselves, I think is absolutely essential in these processes. Thirdly, there should be ample protection for outside second positions. As the system I've proposed here -- I think it will tend to perpetuate itself and justify itself. It becomes a self-perpetuating system. The only time where I think there is one provision for an outside second position is 29(4), but there should be more opportunity for that throughout the Bill.

I'd also like to draw attention to what I think is a problem that is significant throughout the proposed Act and that is that there's a lot of sloppiness in the use of language. Just by way of example, I refer to the definition of "mental disorder" and look at some of the language there. It says:

> "mental disorder" means a substantial disorder of thought . . .

Well, what's substantial? That's a vague, highly subjective term. It goes on to say:

> . . . a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs . . .

Well, again the word "grossly" is highly subjective. I think that kind of interpretation lends itself to abuse. As well, I think the definition of "mental disorder" is so broad that even the mentally handicapped or the mentally retarded could be included under that section. So I think some consideration has to be given to those concerns.

I have many other concerns, but I think that I could bring them out during clause-by-clause study during Committee of the Whole stage.

MR. ACTING DEPUTY SPEAKER: The hon. Member for

Calgary-North West.

DR. CASSIN: Yes, Mr. Speaker. I'd like to take this opportunity again to speak in favour of Bill 29. As the minister has indicated, it's been four years in the making and certainly it's a very welcome piece of legislation. It's a sensitive piece of legislation.

There's been a good deal of discussion and debate and input from those people that are directly involved with the treatment and the concerns of our constituents and the people of this province who have mental illness. It's always much easier to develop laws and regulations for an ideal world, but unfortunately this isn't an ideal world. It would be nice to have access to a lawyer and perhaps one or two psychiatrists at 2 o'clock in the morning when you have someone who is ready to tear up or destroy your department and some of your staff, and you have to make a decision to deal with that problem, recognizing at the same time that the following day you may be dealing with a very subdued, co-operative individual. Mental illness is just that way. We have people who have acute psychotic breaks that may be precipitated by any number of problems, and they have to be dealt with. The people on site have to make those decisions.

I have some problems with the suggestion that perhaps two physicians who are not psychiatrists are unable to make those kinds of decisions, recognizing that if we are dealing with the question of an involuntary commitment or admission, usually that individual is already in a hospital. In many cases they've been brought in by the police or by the family. The physicians who are dealing with that individual are dealing with these kinds of problems on an ongoing basis. Whether somebody has been smashed up in a car accident, whether they have had a heart attack, whether they have an acute psychiatric problem, that certainly is within the realm and the competence of those individuals. It must be also recognized, as has been pointed out, that there's a shortage of psychiatrists in certain parts of the province, and even in the larger cities, where you may not be able to have access to one or two psychiatrists at the time you need them. Usually they are available via the telephone, where the physician can relay the information and obtain some support in helping to make that decision. But the whole goal of Bill 29 is to deal with protecting that individual and to provide an appeal process and a mechanism whereby someone is not incarcerated or committed when they should not have been committed, or they are subjected to a form of treatment that is inappropriate and they have an opportunity to appeal that decision.

I appreciate that there are concerns and we cannot satisfy all the vested interests. I particularly have some problems from the standpoint of the medical record. It's easy for someone in the legal profession to render a judgment on an action that has taken place and is over. But when one is dealing with something that is fluid, that is ongoing -- and a medical record is really a means whereby a physician communicates with his colleagues and the other members of the profession, and quite often we have to make perhaps a differential diagnosis that there may be any number of different processes going on. There may be some concerns. It's unfortunate that some people feel that perhaps someone has to commit a violent act before we're able to take some action.

I think professional people who are dealing with individuals have a concern that a particular problem may arise, that they should at least be able to alert the other people who are responsible for that individual without having to be concerned that they are going to have to answer in a court of law to "Why did you use this term on this individual?" and that this was inappropriate terminology, and that the individual would refrain perhaps from using judgment to try and direct him and help and assist in the treatment of a patient. I would think this legislation is long overdue, Mr. Minister, and I certainly support what we have here before us.

I also would like to comment on the position of the advocate. An advocate is there; his position or her position is really to act on behalf of the patient. The advocate again is selected by the Lieutenant Governor in Council. I am not aware of anything in the Act that prevents the patient from recourse to the courts or to the Ombudsman. The advocate is there to work with the patient and with those people that are providing the help, but I'm not certain that this precludes additional recourse to other bodies if, in fact, an injustice is perceived to have taken place.

I would like to conclude my remarks by saying that I think this legislation is overdue and will be welcomed by both the profession and, I would hope, those groups who have concerns and work closely with our individuals with mental illness.

MR. ACTING DEPUTY SPEAKER: The Member for Edmonton-Strathcona.

MR. WRIGHT: Thank you, Mr. Speaker. While it is recognized that this Bill is a sincere and useful effort to improve the current legislation and stems from a task force which did useful work, in my respectful submission it does not go as far as it should in the area of civil liberties, I suppose one can class it. I know this is perhaps a bit tedious to listen to from people who it is thought have not had a great deal of contact with those who are mentally impaired. But if you think about it, since the thrust of the Bill is to recognize the rights of the patient, to that end the patient adviser, the patient advisory service, is instituted.

If that is the thrust, then we should be logical about it and follow through with it starting from the beginning. For instance, right at the beginning we do not in this Bill, Mr. Speaker, treat the patient as an ordinary citizen. Look at section 10. I think this is touching on the principle of the Bill. I make no apology for reading from section 10, which is the basic one where the patient is being unco-operative. It says:

> 10(1) Anyone who has reasonable and probable grounds to believe that a person is
>
> (a) suffering from mental disorder,

and so on, can swear out information and take it before a provincial judge and get an order that the patient be apprehended on a warrant for examination.

Now, in law that's called imprisonment, because your liberty has been taken away from you. The first thing you know a policeman turns up with a warrant to take you away to be confined, to be examined, and that on the information of one person alone, Mr. Speaker. He or she has to go before a provincial judge to be heard and to convince the provincial judge, but that person may be vindictive or, more likely, is not vindictive but mistaken or exaggerating. Yet the person is arrested, doesn't know why he or she is being arrested, except that it is a process under the Mental Health Act, and is involuntarily confined there for at least 48 hours and probably for a month, because it is probable there is enough there to convince the examining physicians at the hospital, who have to be on the safe side in their judgment that there should be an extended period for examination.

That surely strikes at the civil rights of the patient right at the

outset. In fact, section 7 of the Charter of Rights, as you probably know, says:

> Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Well, the single principle of fundamental justice is: listen to the other side. And here this is not taken into account at all.

[Mr. Deputy Speaker in the Chair]

In point of fact, Mr. Speaker, it may be taken into account but just never taken into account in practice; i.e., it may be taken into account in law but not in practice, because if one goes to section 4 of the Summary Convictions Act -- an unlikely place to find the authority that governs this, but I believe it does -- one reads that

> Except as otherwise specially provided, the provisions of the *Criminal Code* (Canada) respecting summary convictions and the proceedings relating thereto apply in respect of all convictions . . .

So far it doesn't apply to anything here. Then it goes on:

> . . . and all orders and the proceedings relating thereto . . .

relating to the orders, that is

> . . . made or to be made by a justice.

I had a case once, as a matter of fact, where the judge set the warrant of apprehension aside on a habeas corpus application, because there had been no notice to the patient on the summary conviction proceedings under this section. So maybe it's there in law, but it's far easier to set it out in the Act itself. Indeed, under the Charter of Rights, Mr. Speaker, I believe we are obliged to take account of that whole area of notifying the involuntary patient before he or she is apprehended of the intention to do so and let him or her have his or her say before the examining magistrate. What it comes down to is that there should be a bill of rights for people who are alleged to be mentally impaired or who are, in fact, mentally impaired which goes considerably beyond what is set out in this Bill. I have to submit that it is not sufficient to repose an undefined authority in a patient adviser or patient advisory service. There has to be something more concrete than that. There should be in a schedule to the Act something like a patient's bill of rights, I submit, that states such matters as the right to remain free of incarceration in any psychiatric facility.

Alleged dangerousness or criminal acts should be dealt with in the criminal justice system. The hon. member on the other side was talking about it's all very well in effect to talk academically, as it were, about this, but how about the patient who is disruptive and making threats in fact, or reasonably apprehended in one's office or place of business or even one's home at the time? Well, doing that is, on the face of it, criminal activity and can be dealt with under the ordinary rules of criminal law. You can be arrested for breach of the peace and put under recognizance but restrained in the meantime and, in fact, then remanded for psychiatric examination, and of course in court will have the right to make statements on his or her own behalf, unlike the procedure here.

The right to due process: I've spoken of that briefly. The right to access to free legal advice: I suppose you can get that indirectly through the patient advisory service here. The right to be represented by a lawyer of his or her choice during any or all steps, the right to remain silent, and so on through the whole gamut of rights which, when you think about it, ought to be the right of every citizen. To deprive the citizen of those rights is coming back to the very thing we've been talking about, that suddenly when we get to mental incompetence or alleged mental incompetence our whole schedule of rights disappears. You see, many, many people who are thought to be mentally impaired are really eccentric more or less. The eccentricity may pose a threat to the way we do things in the opinion of sane people, uneccentric people, but one person's eccentricity may be another person's madness. So I believe, Mr. Speaker, that we have to be more careful of the rights of the supposedly mentally impaired.

On the other hand, sometimes we're too respectful of their rights, to their damage and detriment. For instance, one of the proposals made by those who advocate patients' rights in this area is that mere incompetence should not be a ground for apprehension. Yet in the inner city an extraordinary amount of the worst problems are those patients who are mentally impaired but do not present a threat to themselves or others and therefore may not be incarcerated. But they are totally incompetent of managing their own affairs, and they use on a daily basis the services of maybe one and a half people all the time to try and keep track of them, to recover their money which they have lost, to rescue them when they're beaten up, and all of that. It's not doing them a service to keep them out because you can't really ask them to go somewhere. They'll say, "yes" perhaps and go there for a day or a week maybe. There will be the expense of admission and so on; then they'll wander away again. That is going too far in the opposite direction, although that does occur presently. We're talking about the rights of those who are confined or about to be confined,

Mr, Speaker, I won't go through the whole list of the rights that are proposed by the advocates of a bill of rights for the mentally infirm one by one on second reading, I just looked up in the book to see if a private member had the right to file a document in debate, and you don't, it seems. So I'll perhaps send this to the minister. But that is going to be something that I think should be looked into at the committee stage of this Bill at any rate. At the second reading stage I will simply say that in these areas of rights, although a good attempt has been made to improve them in an inchoate way by the patient advisory service or the patient adviser, we have not been definite enough about it. That should be looked into.

MR, DEPUTY SPEAKER: Hon, Member for Athabasca-Lac La Biche.

MR, PIQUETTE: Yes, thank you, Mr, Speaker, I also would like to lend my congratulations to the minister for introducing the new Mental Health Act a very definite improvement over the old Act. However, I would like to also support the point of view by the Member for Edmonton-Strathcona in terms of section 10 of the Bill. I can relate a couple of examples in terms of cases I've handled as an MLA since my election which lead me to believe that this section needs to be strengthened. Because I can still see a number of loopholes here in this part, of the admission:

> Anyone who has reasonable and probable grounds to believe that a person is
>
> (a) suffering from mental disorder, and
>
> (b) in a condition presenting or likely to present a danger to himself or others
>
> may bring an information under oath before a provincial judge.

And the provincial judge may incarcerate or arrange an examination of that individual.

A couple of the cases that come to mind where this will present some difficulties in the future like it has in the past are where spouses are having a marital disagreement. In both occa-

sions I have been made aware of, one spouse has used this particular type of tactic to have one-upmanship in terms of divorce proceedings. On these two separate occasions that have been brought to my attention, there was no evidence of any type of mental disorder except great marital strife, and one of the conniving spouses was led to believe that if there was a charge of mental incompetency on the part of the partner, there would be a greater chance of winning custody of the children, et cetera. I find it hard to believe that here we say that anyone who has reasonable and probable grounds to believe that a person is suffering from mental disorder can, without any medical certification or the opinion of a family doctor, especially with a spouse that needs to confirm this mental disorder -- it just can't be an individual who may come out of the clear blue sky without knowing the reason for bringing such a charge. I can assure you that some provincial judges have been very lax in terms of ensuring that the proper processes are carried on, that the proper respect of civil rights is given to the person charged. I think that section very definitely, in my mind, contravenes the Charter of Rights and Freedoms, and it's going to be open to continual abuse like what has been in the past. So that section, in my mind, has to be greatly strengthened, and the language must be changed to prevent any future abuse.

I recall again when I was going to university, when I worked in the summer at one of the mental institutions in the province. I saw a number of examples of people who were being admitted who were actually incarcerated for a number of years on very minimal grounds for continued incarceration. If we're going to be having a new Mental Health Act which makes sure that we do not have the kind of bogeyman type of legislation we had in the past, we have to make sure that the potential abuse of individuals who may bring charges of mental incompetency against an individual -- they are not simply doing that because of a malicious type of tactic. So there should very definitely be a medical opinion in any of the admissions or any of the grounds for a person to be apprehended because of mental incompetence.

Another area which I feel needs to be reviewed is the patient advocate. I would like to see some clear indication that the right to an Ombudsman is not compromised by this Act, because I think that even though we have some assurance that maybe it does not, there's no indication that an individual who does not wish to use the patient advocate could have the service of the Ombudsman. It could very well be that the Ombudsman will read this Act as indicating that he is not at all to be involved in these cases. So I think that should be indicated in the legislation in some of the amendments in the Committee of the Whole, to make sure that the individual who may not wish to use the patient advocate does have the clear choice of going to the Ombudsman, and not leave that unclear.

Of course, as already indicated, for the patient very definitely, because in a lot of the cases we are talking about very impoverished people, people who do not have the mental competency to defend themselves -- without any legislation to ensure that legal aid is present for these patients, not simply as a reactive but as proactive type of issue, to make sure that all i's and t's are dotted and crossed -- we must ensure that charges of mental incompetency do not result in anyone not receiving proper treatment simply because the individual himself is not able to properly protect himself in view of the charges. So it's very much an insured kind of piece of legislation that needs to ensure that the quality care that individual deserves is delivered.

If the legislation can be strengthened to make sure that at all times those patients have that due process available to them, then I think we're going to have a tremendous Mental Health Act. With these comments I'll await the minister's reaction.

MR. DEPUTY SPEAKER: Order please. Perhaps before we go on, hon. Member for Athabasca-Lac La Biche, the Chair is not certain what the Chair heard, but the Chair would simply ask the hon. member to perhaps look at Blues overnight. The Chair noticed there was some comment with regard to judges, et cetera. The Chair would advise the hon. member to check *Beauchesne* 316 and *Beauchesne* 321, and perhaps tomorrow the hon. member may choose to make comments to the House. The Chair only advises that tonight, so that the hon. member will have the opportunity to look at the Blues. It's not allowed to criticize, as hon. members know, people who cannot protect themselves, such as judges and courts.

The hon. Member for Calgary-Mountain View.

MR. HAWKESWORTH: Yes, thank you, Mr. Speaker. It was in late 1983 that the Drewry report was presented to the then Minister of Social Services and Community Health, outlining the principles and details that that task force recommended in terms of changes to the Mental Health Act. It's been a long time in coming, and I guess I add my comments to the minister, generally, in congratulating him on bringing forward a new Mental Health Act. But in relation to the recommendations made by that task force in 1983, there are a number of areas that have not been reflected in this legislation. I think it would be in order, first of all, in closing comments this evening, if he could speak to those. And if not, perhaps at the point at which we deal with Committee of the Whole and clause-by-clause study, the minister could perhaps be prepared to respond in more detail to some of these provisions.

I was interested, for example, in the Drewry report, that one of the basic premises, in fact the first recommendation that was made, was that there should be an emphasis on community-based services; that is, that the Mental Health Act ought to give a mandate. To use the words of the task force:

> a legislative obligation to establish and maintain a satisfactory system of community-based mental health services . . .

It referred to two reports that were done: the McKinsey and Clarke Institute reports.

Notwithstanding those specific reports, I'd like to know where in Bill 29, as one of the basic premises, that legislative obligation is reflected. If it's not, perhaps the minister would indicate what it was that persuaded him not to include it in the Act, given this strong and overriding recommendation of the Drewry report. Perhaps it's because the Mental Health Act, Bill 29, is being introduced by a minister of health care institutions as opposed to a minister of community health based services and programs. But I would hope that simply because one minister is introducing an Act, that should not preclude an Act reflecting the requirements and mandates of another minister, that being in the community health field.

So I think this is a major oversight, and as I say, I would like to ask the minister to indicate why that was an oversight. If it was, I would ask him to reconsider it and perhaps make some amendments later at the amendment stage of the Act.

Some comments have been made about another important principle, those being patient rights and, specifically, how the system could be established to protect the rights of patients. More specifically, I take it there's an expectation that the entire system can be watchdogged or monitored faithfully and reasonably well enough by some one person called a "Mental Health

Patient Advocate," which we find in part 6 of this Act. Well, I'd feel a lot better about that, Mr. Speaker, if in the Act itself the powers and duties of this patient advocate were spelled out. But all we have in Bill 29 is a reference to the fact that "The Lieutenant Governor in Council may make regulations."

I would like to know, given the importance this section is going to play as a monitor and as an oversight of the entire system, if the minister would at least undertake to table those proposed regulations at committee reading of this Bill, so that we could at that point find out what the minister really has in mind as to the scope and nature of the powers of this advocate. Because in the absence of that, Mr. Speaker, we don't know whether this is simply going to be one individual who will be incredibly overworked or have, on the other hand, such a narrow mandate that he'll basically have nothing to do, will be nothing more than filling a position spelled out on paper but in real life have very little to do.

When I compare this, for example, to the concept put forward by the Drewry report as to a limited legal advocacy system, which spelled out the need to have legal counsel staffed by this advocacy service on a full-time basis -- it shouldn't report to government but to some form of independent agency, not the minister, as outlined in part 6 of Bill 29; it should be a service that's "highly visible and accessible to its patients"; and the facilities in hospitals and other facilities should be in place in order to allow this service to fulfill its mandate -- I see none of this guaranteed, at least in part 6. There's some reference made to it in that this advocate may, if it has the money, engage the services of professional people. But it certainly doesn't seem to me to act in any way as an independent service, as envisioned by the Drewry report. It also envisioned that patients would be advised by this advocate of their rights. It would act "for patients . . . pertaining to their release." It would act

> for patients in all matters pertaining to attempts to provide treatment . . . without their consent . . . and in such matters as obtaining access to medical records,

if patients needed help in that. It would also act in regards to guardianship and appointment of committees.

Now, that's a fairly all-encompassing and broad scope of services envisioned by the Drewry report, and to some extent that may be duplicated by the regulations the Lieutenant Governor in Council might make. But in the absence of it being spelled out in the Act, Mr. Speaker, I have a lot of concerns that this will be simply words in the Act to which the minister from time to time can point and say, "Oh, yes, we have an advocacy service, and we shouldn't be too concerned." But in reality, it doesn't accomplish much or provide the service that's needed.

I'm also concerned and would like to echo the comments made already by others in terms of the process of issuing warrants for apprehension. This is section 10 of the proposed Act, Bill 29. Mr. Speaker, the Drewry task force advocated that a whole new step be added to the process before an apprehension warrant could even be sought. The task force recommended the use of a directive by an approved mental health professional as a way of persuading individuals to seek treatment before having to go to the fairly onerous and somewhat formal process of the courts system and the involvement of peace officers. I thought the proposal had some merit, although the Drewry task force acknowledged in putting forth this proposal that it's not something that could be compulsory, or would not have the same legal effect as the issuance of a warrant. But the task force felt that failure to comply with the directive could then lead to the next step: the more formal and onerous task of issuing this warrant for apprehension.

It just seemed to me, in reading the report, that it added a kind of more reasonable, conciliatory, therapeutic approach to solving the problem before it sought the more onerous legal solution. It also laid the groundwork then for applying to the judge by laying an information; that is, the physician or the health care professional would then have more documentation before going to that judge, and would then be in a position to give that judge more information. It seemed to me, Mr. Speaker, to be a kind of imaginative idea. It didn't seem that it would be restrictive or cumbersome or add an unnecessary tangle. I believe it would still have left open those emergency situations where a warrant for apprehension is needed, perhaps in those few extreme cases. But it did inject that attitude, I guess, of using community and therapy and professionals earlier in the process without the resort to the onerous legal process.

So I'd like the minister to explain to the Legislature, if he would, why this is rejected, or if it is in fact found in some other section of the Act: where this other process might be found or facilitated. I think it was an important concept in the Drewry report and it seems to be again, another one of them that was overlooked.

As well, in an apprehension for examination, the Drewry task force acknowledged that under the existing system there was some potential for abuse where well-meaning but perhaps untrained persons might become involved: loved ones who are emotionally affected by the behaviours of an individual, friends, or acquaintances might seek their own peace of mind by using somewhat overzealous efforts to protect this individual. They go lay an information, and it may motivate that judge to issue a warrant because of the individual's cause for being there, for laying the information. So as a bit of a check on this process, the task force suggested that the person bringing an information should be required to appear before the judge for questioning on the information. I would ask why -- it appears to me, at least that that requirement has not been included under section 10, and I'd like to know what persuaded the minister to reject that particular recommendation. I do note that the Drewry report recommended that evidence should be on the record: a clerk should be present to transcribe it. I see that has been reflected under section 10(4). Nevertheless, that was one of the few recommendations that appear to have been adopted in this section, and I would like the minister's comment on that.

As well, Mr. Speaker, the present Mental Health Act has a fairly extensive section outlining the duties of the Provincial Mental Health Advisory Council as well as the regional mental health councils. That section has been altered somewhat dramatically to the extent that individual members are not outlined in the new Act as they are in the present one, and I think that to some extent reflects the recommendations of the Drewry report. But I am concerned that some of those groups that were given a mandate to appoint members by being named in the existing Act might lose their involvement if the minister doesn't appoint or provide for their appointment. So I would simply suggest to the minister that it seems to me there are certain groups within the province that do have a very important role to play in the provision of mental health services. I would have liked to at least have seen some mandate provided in this section for the minister to consult with those groups before making his appointments, and I'm wondering if the minister has considered amendments in that particular section.

As well, I note that the Drewry report suggested that a significant role be accorded the Provincial Mental Health Advisory

Council in requiring the minister to submit to that body proposals for change before actually carrying out those changes. It would provide for a review body with a community base and would also, in that sense, give the minister advice so that changes in policy and direction aren't taken too rashly, but rationally. And I'd like to hear from the minister what specific mandate he envisions the mental health council's to be, because it has over the past years served this province well by providing a community voice into mental health issues in the province, one that I think has been a valuable one, and I would hate to see these groups emasculated because of the changes that have been made between the two Acts. So I would appreciate hearing his comments: perhaps these duties and powers he envisions being outlined by regulation. Although it doesn't say that in the Act, it would seem to me to be the kind of power and duty this Bill should mandate.

With those overview comments, Mr. Speaker, I look forward to the minister's closing remarks. And for those issues not dealt with adequately in his closing remarks, I would anticipate pursuing them at Committee of the Whole stage. Thank you very much.

MR. WRIGHT: On a point of order, Mr. Speaker.

MR. DEPUTY SPEAKER: A point of order.

MR. WRIGHT: Parliamentary Counsel's been good enough to tell me that it is quite customary, in fact, for private members to file papers within reason referred to in speeches, and therefore, with your permission, I'll file the patient's bill of rights that I referred to in my speech.

MR. DEPUTY SPEAKER: Agreed.

May the sponsor of Bill 29 close debate?

HON. MEMBERS: Agreed.

MR. M. MOORE: Mr. Speaker, first of all, I want to thank all hon. members who spoke this evening for their contribution toward second reading of Bill 29, the Mental Health Act. I did want to say, particularly with respect to the last speaker, the Member for Calgary-Mountain View, that much of the comment he made is matters which are more properly dealt with probably in committee study, and I would certainly be prepared to do that.

I'd also refer the hon. member to my opening remarks in *Hansard* at 8 o'clock this evening, where I covered some of the questions he raised with respect to why this particular Bill doesn't have some things in it. I would, however, just indicate to all hon. members with respect to the Drewry report, which was ordered by the Minister of Social Services and Community Health, the Member for Taber, in January 1982, that that report had some 200 recommendations in it. Twenty-four of those recommendations were not related to legislation, and some of them have been dealt with separately as policies or procedures. Thirty-nine recommended no change in mental health legislation and were accepted. Forty-seven recommended change and were accepted, some 59 recommended change but were not accepted, and another 31 were amplifications of other recommendations and could not be counted because they were part of other recommendations. So there are a very substantial number of recommendations in the Drewry report, not all of which we accepted. Obviously, we did accept a great number of them.

Mr. Speaker, there was one underlying theme this evening that a lot of members expressed that concerns me a bit. The hon. Member for Edmonton-Strathcona expressed his point of view well with respect to the rights of individuals when it comes to this legislation. And I just wanted members to reflect upon sort of the other side of the story between now and when we have committee study of this Bill.

First of all, we need to remember that this legislation was brought forward, and its legislation on other jurisdictions and the present Mental Health Act, because we want to help people. And I don't believe there is a physician or a psychiatrist or a practitioner anywhere in this province who doesn't want to sincerely help people with mental health problems. No one wants to put them away. No one wants to treat them against their will. But remember this: if my mental health is such that I am judged to have

> a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs
>
> (i) [my] judgment
>
> (ii) [my] behaviour,
>
> (iii) [my] capacity to recognize reality, or
>
> (iv) [my] ability to meet the ordinary demands of life,

if that is the state of my mental health, then I believe as a Canadian and as an Albertan that I have a right to treatment. That right to treatment needs to be balanced against my right to object in the mental state which I find myself in. To take away that right to treatment may be to deny me the ability to return to my family and my community and to regain my health.

That's the other side of the story as opposed to ensuring that our individual rights are maintained. This legislation tries very carefully to balance that I will be the first one to admit that it's a very delicate and tough balance, and I thank all members for their contribution to that balance.

[Motion carried; Bill 29 read a second time]

Bill 23
Maintenance and Recovery Amendment Act, 1988

MR. CHERRY: Mr. Speaker, I move second reading of Bill 23, the Maintenance and Recovery Amendment Act, 1988.

The Maintenance and Recovery Act provides a scheme whereby responsibility of unwed fathers for the maintenance of children born out of wedlock can be determined and enforced. The main principle of Bill 23 is to repeal a provision in section 25(2)(a) of the Maintenance and Recovery Act that currently requires the director of the maintenance and recovery to ensure that maintenance payments obtained for unwed mothers are spent on specific items or purposes specified in an agreement or a court order. Among other things, these payments would include medical care and maintenance expenses connected with the mother's pregnancy and ongoing care, maintenance, and education for the child. In other words, the director is expected to police how the mother uses the funds she is given. The current Maintenance and Recovery Act can be seen as intrusive and has limited usefulness. The proposed amendment would repeal the subsection in question and bring the law in line with current administrative practices such as those used with the Maintenance Enforcement Act.

In summation, this amendment places the administration of funds more appropriately with the director of the Maintenance Enforcement Act, which will prove better from both an administrative and legal perspective.

[Motion carried; Bill 23 read a second time]

Bill 30
Workers' Compensation Amendment Act, 1988

MR. DINNING: Mr. Speaker, it's my pleasure to move second reading of Bill 30, the Workers' Compensation Amendment Act, 1988.

Mr. Speaker, this Bill brings to life a year's worth of discussion, consultation, and very serious deliberation. That deliberation had one single objective, and that was to make the Workers' Compensation Board a more effective and efficient organization to serve the needs of workers and employers in Alberta. For workers the board is there to provide fair and timely compensation for those workers injured on the job. For employers the board provides a no-fault insurance program where the employers, as sole funders of the plan, are free from suit by injured workers.

You'll recall, as all members will, Mr. Speaker, our announcement of March 31, 1988, where we laid out a three-point plan of activity and action on the Workers' Compensation Board. Firstly was the release of a discussion paper entitled Shaping the Future, which focuses on a number of very serious and very important aspects of the board's operations. It goes some distance to effectively bare our soul in identifying problems and deficiencies in the existing Workers' Compensation Board, and I believe makes some very solid and very sound recommendations for making changes to bring that board into the 1980s from a policy and management point of view.

Secondly, we announced the appointment of Mr. Vern Millard to serve as chairman of the one-man task force to take the Shaping the Future document out to Albertans and allow and enable Albertans to respond to the recommendations in the report. I spoke with Mr. Millard as recently as this afternoon, and he reports to me that those consultations are going very well and that they are meeting in a number of centres throughout the province and, over the period of time that his task force will be operating, will receive a fairly balanced and good mix of representations from employers and from workers, from employer organizations and worker associations as well.

But thirdly, Mr. Speaker, was the creation of a new organization that called for the appointment of a part-time board of directors to oversee the administration and governance of the organization and, secondly, to separate and carve away from the new board the appeals function so that workers and employers would have access to a timely route of appeal. That appeal commission will focus its entire full-time efforts on the appeal function.

I believe, Mr. Speaker, that this proposed organization does bring the Workers' Compensation Board into the 1980s and addresses and is very responsive to the concerns of injured workers and employers, that they have access to a timely and fair compensation system, and that employers continue to be free from suit by injured workers.

I look forward to the debate on this Bill, Mr. Speaker, and certainly look forward to all members' support in moving the Workers' Compensation Board into an effective and efficient organization, organized to respond to the needs of workers and employers in the 1980s and the decades ahead.

MR. DEPUTY SPEAKER: Hon. Member for Edmonton-Beverly.

MR. EWASIUK: Thank you, Mr. Speaker. I'd like to have risen to this Bill and to say that I support it and endorse it. Unfortunately, I rise to oppose it on the strongest terms.

This Bill, Mr. Speaker, completely changes the structure of the Workers' Compensation Board from the fundamental purpose and intent that this Act has served this province for some 70 years, and I might add that it has served us well. However, I certainly agree that there is a crisis with the workers' compensation. And this crisis, Mr. Speaker, has been created by this government, the same government that now intends to make injured workers pay the price. The crisis is financial. Everyone that has had to deal with the Workers' Compensation Board recognizes that there is a crisis with the system. This crisis has been created by deliberate government policy which has kept assessments at an artificially low level which has gradually starved the fund from which benefits are paid. Since this government assumed office, it has made no effort to keep the assessments in line with inflation. In fact, the 1986 financial statement for the Workers' Compensation Board reports, and I quote:

> The financial impact of rising costs was further compounded by the decision not to increase assessment rates for the fourth year in a row.

Even with the 3 percent increase of January 1 of this year -- the first increase, I might add, since 1983 -- the annual deficit for this year is expected to be over $60 million, which will raise the unfunded liability to well over $400 million. In fact, so much damage has been done to the fund because of the long holiday employers have enjoyed from assessment increases that a 20 percent increase would be required for this fund even to break even. Yet nowhere has the minister identified the low assessment as the cause for the WCB crisis; instead, claim costs are pointed at as being the only problem.

Yet, Mr. Speaker, there is another crisis within the WCB, and that is the prevention of accidents. I believe that to date the government has failed to live up to its responsibility in this area. It is a known fact that compensation only reflects a small portion of the true extent of workers' related injuries and illnesses, that being only because a small portion of all workers are covered by the Act, and many work-related injuries and illnesses are not reported. Since 1981 only those injuries resulting in compensable lost time are now being reported. So instead of responding positively to this silent plague, the government has embarked on deep cutbacks in occupational health and safety staff and programs, thereby deteriorating health and safety standards on the worksite in this province.

Mr. Speaker, Bill 30 is being proposed as a result of a review process to which the minister has alluded. However, we do not agree with the way the minister chose to conduct that review, particularly when he had stated that stakeholders would have an input. Instead of the long-standing practice to have a select committee whereby there would be public input, a private management consulting firm was commissioned to conduct an internal review over which the present chairman of WCB presided. Further, a closed and private directional planning team was created to replace the board itself. That review was a secretive internal process that was substituted for the select committee. The minister then went even further, by appointing a one-man task force instead of a full-fledged committee on which all stakeholders would have been assured equal treatment.

Bill 30, if approved, will reorganize the Workers' Compensation Board radically. And I'm concerned that change is being proposed without public input, yet this change is the most important change that will take place relative to the Workers' Compensation Board. It will have a significant input on all parties but most particularly on the injured workers. This change

was not part of the Shaping the Future document to which the minister has referred, which is subject to some public input, but rather was being advanced even before the hearings on Shaping the Future are being heard. It makes one wonder whether there should be any bother with the hearings at all. It's quite clear the minister has made up his mind, and to discuss any other proposal seems to be pointless.

We are not opposed to reorganization if it is required, but we are opposed to these changes, as I believe the reorganization violates the spirit of the compensation system that has evolved in Canada over the decades. A collective participatory approach by employers and labour to the workplace health and safety has always been the basic premise of the system. Two major fundamental principles in the board's structure are being denied. The administrative and appeal features of the board will be separated. I submit, Mr. Speaker, that the integration of both of these functions is critical to the operation of the board, because it insures that those who are on the board are also involved firsthand in the consequences of their decisions. While one can agree that the workers' compensation bureaucracy may have become bulky and unwieldy, I don't believe that to throw out the baby with the bathwater is the answer.

Mr. Speaker, the trilateral structure of the board, with the balanced representation from both labour and management, will now be abandoned in favour of a corporate structure system, a structure which will be headed by a president and a chief executive officer. This change spells a complete lack of understanding of the basics of the Workers' Compensation Board specifically and of our industrial relations system generally, which has been based on a joint labour/management premise. Therefore, Mr. Speaker, it is crucial that this joint input be continued for all administration matters, for hiring, and for policy matters.

There's another very glaring change in this Act which will now deny organized labour a traditional role on the board. This is again a complete disregard for the foundation of the Workers' Compensation Board system that is recognized in Canada, where it's recognized that the role of organized labour -- and all boards across Canada include nominees from organized labour. Quite frequently the appointments are recommended to the minister from the federations of labour. Instead, a board of directors will be headed by two management nominees and a senior administrator from government bureaucracy. Worker representatives will now be limited to two members on a 12-person, part-time board of directors. Will the minister advise how these labour representatives will be chosen? Will unions be represented? I ask that of the minister.

The minister has stated that this structural change of the WCB is unique, and I agree that it is unique. I also fear that this Bill is also an example of regressive, antiunion, antiworker legislation.

Finally, I will request that the minister place this Bill on hold, at least until the task force hearings are concluded and the results of those hearings are studied, so that the input of the stakeholders will truly be heard before any further action is taken.

Thank you, Mr, Speaker.

SOME HON. MEMBERS: Question.

MR. DEPUTY SPEAKER: May the hon. minister close the debate on Bill 30?

HON. MEMBERS: Agreed.

MR. DINNING: Mr. Speaker, I'm glad to have had the comments and the position of the opposition party on this Bill and on this process, because it's good to have on the record the New Democratic Party's position, what they're opposed to. What they're opposed to is this process. They're opposed to a greater emphasis on rehabilitation as opposed to compensation. They're opposed to a wage-loss method of compensating injured workers. They're opposed to a more effective, more efficient, more sensitive, and more service-driven organization. And that's precisely what the hon. member has stated when he has stated his opposition to the process and when he says that the worker is paying the price by this kind of approach. The tragedy is that the opposition is arguing about something that is so important in making changes to the Workers' Compensation Board, such that there is a greater emphasis on rehabilitation. The woeful lack of rehabilitation and a co-ordinated rehabilitative approach is something that has caused all of those workers to line up at each of our respective constituency offices. Had there been a more effective rehabilitation plan from day one, we wouldn't be facing the numbers and the very, very tragic stories that each of us faces on a weekly basis.

The hon. member also mentioned something about stakeholder input. I want to make it perfectly clear, Mr. Speaker not only did we seek stakeholder input during the process -- and that is outlined in the paper on page 11 in the Shaping the Future document -- where we went out to Alberta labour unions, where we went out to Alberta employers, business organizations; we talked to the provincial Ombudsman, other MLAs, the workers' compensation boards in other provinces, and others across the country. So we had that input, and now today we have literally hundreds of organizations and individuals appearing before the Millard task force.

The hon. member stated his opposition to the Bill based on removing the right of workers or unions, but specifically workers, from having their views known and participating in the Workers' Compensation Board process. Yes, we are splitting the management and administrative function from the appeals function. And I think that the majority of members of this House and the majority of Albertans in a large measure support that approach.

But on the administration and government side the Bill spells out in section 3(1) the appointment of a new board of directors consisting of 11 members: a member who shall be chairman, the president of the Workers' Compensation Board, plus representatives, three in number, from each of the following groups that will represent the interests of the following groups: workers, employers, and the general public. Then as well under the appeals commission, which is outlined in 5.1(1) on page 3 of the Bill, the appeals commission, whose sole full-time responsibility will be to hear the appeals put forward by injured workers on their claims and on their concerns; the appointment of an appeals commission consisting of a chief appeals commissioner, who shall be chairman; one or more appeals commissioners from each of the two groups, employers and workers. So, Mr. Speaker, I really take exception to the statement by the hon. member that organized labour or that workers of Alberta are in any way going to be denied proper and effective representation on these two bodies.

Will the government hold this legislation? No, Mr. Speaker, we will not. We stated on March 31 that we were going to take a two-staged approach and that those issues that are of such importance to Albertans, such as rehabilitation, benefits, claims processing, the appeals function, funding, assessment, financial

management -- those are matters that are going out through the Millard task force process and on which Albertans are commenting in spades. But the structure of an organization is something that we as a government felt was important to put in place now such that when the task force process is completed, we will have an organization that is up and operating and will be able to adopt and put in place many if not all of the recommendations brought forward by Mr. Millard's task force.

So I believe we're on the right track here, Mr. Speaker, and I welcome the support of all hon. members.

MR. DEPUTY SPEAKER: Those in favour of second reading of Bill 30, Workers' Compensation Amendment Act, 1988, please say aye.

SOME HON. MEMBERS: Aye.

MR. DEPUTY SPEAKER: Opposed, please say no.

SOME HON. MEMBERS: No.

MR. DEPUTY SPEAKER: Carried.

[Several members rose calling for a division. The division bell was rung]

[Eight minutes having elapsed, the House divided]

For the motion:

Ady	Fjordbotten	Nelson
Bradley	Heron	Pengelly
Campbell	Hyland	Shaben
Cassin	Isley	Shrake
Cherry	Jonson	Stewart
Clegg	McClellan	Webber
Cripps	Moore, R.	West
Day	Musgreave	Young
Dinning	Musgrove	Zarusky
Drobot		

Against the motion:

Chumir	McEachern	Roberts
Ewasiuk	Mitchell	Sigurdson
Fox	Pashak	Wright
Hawkesworth	Piquette	

Totals	Ayes - 28	Noes - 11

[Motion carried; Bill 30 read a second time]

Bill 35

Occupational Health and Safety Amendment Act, 1988

MR. DINNING: Mr. Speaker, it's my pleasure to move second reading of Bill 35, the Occupational Health and Safety Amendment Act, 1988.

Mr. Speaker, there are two main changes contained within this piece of legislation. The first is to put in place the nationwide workplace hazardous materials information system, in my view one of the most important developments in occupational health and safety for many, many years. I know that all members of the Assembly will support this important initiative, a pan-Canadian hazard information and education program that has been developed amongst a number of industry groups, labour groups, as well as the federal, provincial, and territorial governments. By combating some serious deficiencies within the existing system whereby unlabeled or inadequately labeled chemicals are at worksites, we are now going to be able to put in place a national, uniform labeling system, some material safety data sheets that inform workers and employers about the dangers of any given product, as well as a very comprehensive approach to worker education.

Secondly, Mr. Speaker, is an important initiative which finds Alberta taking the lead once again in this important field of occupational health and safety by increasing by some tenfold the maximum fines for violations of the Occupational Health and Safety Act. Today the maximum fine for the first violation under this Act is some $15,000; this is being increased to $150,000. For second and subsequent offences the fine is currently $30,000 and is being recommended to be increased to $300,000. This will once again put Alberta on the leading edge by making Alberta the province that takes the lead in this, way ahead of all the other provinces in sending a message to employers, to workers, and the courts that safety must be a number one priority on the job.

MR. DEPUTY SPEAKER: Hon. Member for Edmonton-Beverly.

MR. EWASIUK: Thank you, Mr. Speaker. If this is the last Bill for the evening, I'd be pleased, because I want to leave on a good note and this is an excellent Bill. I certainly rise and commend the minister for its presentation. I think it does a number of things that I've advocated on a number of occasions in the Legislature, particularly the control of products: the handling, storage, and manufacture. That employers and employees are aware of with what it is they're working and how to handle these particular products I think is most significant and hopefully will go a long way toward a reduction of, particularly, long-term illnesses that employees and employers are subjected to as a result of the various chemicals they may be subjected to.

I do have one question, however, on section 8; that's 26(2). I read the present Act, and it says:

> A code of practice shall be posted on the work site in a location where it is conspicuous to the workers and other persons at the work site.

The proposed legislation is somewhat different, and perhaps the minister may clarify it for me. It is:

> A principal contractor or employer who establishes a code of practice pursuant to subsection (1) s h a l l . . .

and then so on. I read into this thing perhaps a discretion whether there will be a code of practice, because it says "who establishes" one, yet maybe someone doesn't have to and may not establish a code of practice. At least, that's the way I read it. Now, if I'm mistaken . . . The present one is very clear. It says "shall be posted." That to me says that there will be one. On the other hand, here it says "who establishes a code of practice," and I think there's some discretionary area for the employer to apply.

I am, however, particularly pleased with the following, (a) and (b) of (2):

> all workers to whom the code of practice applies receive appropriate education, instruction or training with respect to the code so that they are able to comply with its requirements.

I think that certainly is long overdue. I think the instruction, education, and training is particularly significant, and if that is

followed, I think then it will go a long way toward the reduction of illnesses and, hopefully, accidents in the worksite.

Of course, the minister did allude to the fines, and again a significant change here. It is a severe increase, and again I congratulate the minister for having the fortitude to move in that direction. The comment I would make, however, is: how much of a fine is a fine that will act as a deterrent? I think you can impose fines, as we know, in traffic violations . . . In spite of the fines for drunken driving there are still people who will drink and drive. And I suppose the same can apply to a worksite, that in spite of the fines there will be people who violate the safety practices or do not practice safety in the first instance. So I would say, "What is a death of a person worth in terms of fines?" I'm sure we don't know. What I'm really leading up to is that I think the emphasis must -- and I keep saying this over and over again -- has to be on prevention and education and training. If we can continually hammer at those points, we may not need the imposition of fines. It's more important not to kill or maim or cause illness to workers or anyone else on a worksite. It's much more important than any imposition of fines.

So while I certainly agree with adjustments that have been made in this area, I only conclude by saying that I think we must continue to emphasize the safety on plant sites. I again come back to my favourite topic of safety committees where both parties have a responsibility. I think it needs to be a mandatory proposition and regulation that there are safety committees on worksites, that the employers and employees can both take the responsibility to ensure that their workplace is a safe and healthy one.

MR. HAWKESWORTH: I just want to make one comment, Mr. Speaker, and it's this: raising the fines doesn't necessarily in and of itself indicate a greater commitment to safety in the workplace on the part of the government. If raising the fines means that the cost to employers is that much higher as a result of an offence, it may mean that this government will be less likely to pursue prosecutions and instead adopt a more "let's work with companies to solve the problem" kind of an attitude, and the more onerous the penalty under section 32, the less likely they are to pursue it as the ultimate resort. So I'm not at all convinced that the minister . . . When he says that raising the fines is a symbol of a greater commitment to safety in the workplace, all it might mean is that this government would be less likely to pursue prosecuting people through the courts as a result of infractions, and instead will issue instructions to their inspectors to try and solve the problem without going to court.

I think what is really the mark of whether this government is concerned or not is whether they're prepared to actually pursue prosecutions for offences in the worksite. That, I think, to me would be a much better benchmark of how serious they want to pursue these provisions of the Act. I'm certainly pleased to see that the fines are increased. That, of course, will be an effective deterrent if the government issues a clear and strong signal that they're not prepared to allow infractions to carry on, that they're actually prepared to pursue them in the courts. So that to me would be the real mark of the minister's commitment, and I encourage him to demonstrate that that will actually be the final result.

The final result in my mind is not the number of successful prosecutions. To my mind the success is whether reductions in injuries and deaths on the worksite are achieved. Sometimes these are the only means you can use; they're the final resort. But, by golly, a government has to be prepared to pursue these final resorts if all other avenues do not work, and that's to my mind the mark of a commitment to health and safety in the workplace.

[Motion carried; Bill 35 read a second time]

[At 10:39 p.m. the House adjourned to Tuesday at 2:30 p.m.]