



STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

Hansard Verbatim Report

No. 26 – March 17, 2014



Legislative Assembly of Saskatchewan

Twenty-Seventh Legislature

**STANDING COMMITTEE ON INTERGOVERNMENTAL
AFFAIRS AND JUSTICE**

Mr. Warren Michelson, Chair
Moose Jaw North

Mr. Doyle Vermette, Deputy Chair
Cumberland

Mr. D.F. (Yogi) Huyghebaert
Wood River

Mr. Russ Marchuk
Regina Douglas Park

Mr. Kevin Phillips
Melfort

Mr. Warren Steinley
Regina Walsh Acres

Mr. Corey Tochor
Saskatoon Eastview

[The committee met at 19:00.]

The Chair: — Well good evening, ladies and gentlemen, and thank you for tuning in to the Standing Committee on Intergovernmental Affairs and Justice. I am Warren Michelson. I am the Chair of the committee. With me, other members of the committee are Doyle Vermette is the Vice-Chair, Yogi Huyghebaert, Russ Marchuk, Kevin Phillips, Warren Steinley, and Corey Tochor. We have a substitute for Doyle Vermette, John Nilson. And also Cathy Sproule has joined us here, along with the Minister of Parks, Culture and Sport, Minister Doherty and your officials. I would like to welcome you all here.

Bill No. 108 — *The Athletics Commission Act*

Clause 1

The Chair: — We've got a number of bills to go through tonight. We will start off with consideration of Bill No. 108, *The Athletics Commission Act*. Minister Doherty, if you want to introduce your officials and say a few opening remarks, please do so.

Hon. Mr. Doherty: — Sure. Well thank you, Mr. Chair, and good evening to committee members. And I think I'll start off, Mr. Chair, by saying with a last name like Doherty, if I didn't wish everybody a happy St. Patrick's Day, I don't know, I would be remiss if I didn't do that. So happy St. Patrick's Day, especially to Russell Marchuk.

But in any event, Mr. Chair, thank you. And to colleagues on the committee, I want to begin by introducing my officials. With me this evening I have Lin Gallagher, the deputy minister of Parks, Culture and Sport; Darin Banadyga, the executive director of sport, recreation, and stewardship; and behind me is Twyla MacDougall, assistant deputy minister; Dale Measner, senior policy analyst; and Jason Wall, my chief of staff.

Mr. Chair, with your indulgence I'll take a few minutes to provide some introductory remarks. And I think it's important to give some context to this particular piece of legislation as this is the first time that I'm aware of that we're doing this in the province of Saskatchewan with respect to the establishment of an athletics commission. And so I know hon. members will have some questions following my comments, but perhaps some of them will be answered in the context of what I have to say.

So I am pleased to be here this evening to discuss *The Athletics Commission Act, 2013*, which is a new Act respecting the Athletics Commission, professional boxing, mixed martial arts contests and exhibitions.

In June of 2013, the federal government passed Bill S-209 amending section 83 of the Criminal Code to legalize the sport of mixed martial arts across Canada under the authority of a provincial athletics commission or similar established body. This amendment has major implications for Saskatchewan as our province was one of only three provinces that had not taken the necessary steps to sanction professional combative sports events including mixed martial arts and boxing.

To set a bit of context, over the past 15 years mixed martial arts has been one of the fastest growing professional sports across Canada and indeed North America, due mostly to the popularity of the sport's biggest promotion, the Ultimate Fighting Championship. The changes to the Criminal Code provided our province with clarity and an ideal opportunity to put legislation in place to regulate the legitimate side of the sport yet shut down the unsanctioned events that put participants at risk of serious injury.

Recognizing this, our government began the process of establishing a provincial athletics commission. It needs to be stressed that this legislation and the act of establishing an athletics commission itself is not about promoting mixed martial arts or boxing as a sport but about regulating it. By regulating these professional events, we help eliminate illegal fights taking place in the province. We ensure competitors have provided the necessary medical information to be licensed, and also hold promoters accountable to a strict set of regulations to ensure the safety of all involved.

Without a mechanism that sanctions and oversees professional and combative sport events in Saskatchewan, promoters may stage unsanctioned events and hold them without the appropriate standards or safety precautions that help protect participants and spectators.

In developing this legislation, my ministry has been working closely with the Ministry of Justice and other relevant stakeholders to ensure the legislation and regulations have proper protocols and clauses in place to operate an effective and successful commission. My ministry has also put a great deal of emphasis on consulting with other provincial jurisdictions and commissions. These provincial commissions have provided first-hand accounts of situations that we considered in drafting the Act. The experience gained through these discussions has been of tremendous value and will also help to shape the regulations to come.

From speaking with provinces across Canada, we know provincial commissions are proving to be the most effective governance model. Five of the seven provinces that regulate professional MMA [mixed martial arts] events have provincial commissions.

According to provincial jurisdictions, the establishment of provincial athletics commissions provides a number of benefits including consistency in rules, regulations, and processes across the province; the enhanced stability to hold large-scale events; potential overall cost efficiencies; and effective use of a limited group of individuals properly qualified and knowledgeable about the sector.

As for the commission itself, it will hold the authority to sanction professional boxing and mixed martial arts events. This commission will be designed to ensure a consistent standard of qualifications, rules, regulations, and safety protocols for all participants and officials across the province. Furthermore the commission will have the authority to provide protocols for licence applications, event permits, as well as the terms and conditions of an event.

It also ensures that competitors participate in appropriate pre-fight medical testing such as blood tests, concussion screening, and eye exams. It ensures that qualified medical staff and event officials are hired, that promoters and competitors have the proper licences, and that promoters have suitable liability insurance. The commission will also be responsible for tracking competitors' fighting histories and ensuring safety protocols are enforced.

The Athletics Commission itself will consist of an athletics commissioner who will be appointed by the minister and is to be an employee of the Ministry of Parks, Culture and Sport. An advisory committee established by the minister consisting of three subject matter experts and the Lieutenant Governor in Council will appoint an adjudicator who will be responsible to consider appeals for administrative penalties, licences, and event permits. This individual will not be a member of the advisory committee.

The legislation frames areas such as responsibilities and powers of the commissioner, licensing and event permits, security deposit, inspections and investigations, administrative penalties, appeals, and the regulations necessary for this Act. Within the legislation the Minister of Parks, Culture and Sport will also have the authority to apply for a compliance order to prevent individuals from proceeding with an event contrary to the Act and regulations. We want to ensure that illegal activity is prevented before it occurs.

The development of this legislation comes with a great deal of support from the municipal sector as well. For instance, both the city of Saskatoon and the city mayors' caucus of SUMA [Saskatchewan Urban Municipalities Association] have formally requested that government establish a provincial commission. From their perspective, a commission contributes to part of the province's growth plan through increasing economic opportunities.

Extensive consultations continue on the regulations that will accompany this Act. Consultations not only include promoters, officials, and competitors, but also other key stakeholders such as staff at the venues and locations that could host a professional event like the Saskatchewan Indian Gaming Authority, SUMA, SARM [Saskatchewan Association of Rural Municipalities], Credit Union Centre, Evraz Place, and the city of Saskatoon, the Saskatchewan Medical Association and the Sport Medicine and Science Council of Saskatchewan for the medical requirements outlined in the regulations, the Office of the Saskatchewan Information and Privacy Commissioner and the Ministry of Health to consider privacy requirements when dealing with medical and financial records.

And we have also had the opportunity to consult with other government agencies such as the interlocutor for First Nations Métis relations, the Ministry of Justice, Saskatchewan Liquor and Gaming Authority, and with plans to consult SGI [Saskatchewan Government Insurance] in the near future.

Throughout the consultations, my ministry has stressed that government's goal with this legislation is not to promote mixed martial arts or the boxing sector in Saskatchewan, but to regulate these sports so that professional events can occur in our province as safely and as efficiently as possible.

To conclude, Mr. Chair, with the growth of the sport of mixed martial arts and amendments to the Criminal Code, the establishment of a provincial athletics commission is necessary to oversee professional mixed martial arts and boxing events in Saskatchewan. Our government is in a fortunate position in that we have the ability to learn from the experiences, both positive and negative, of other provincial jurisdictions during the establishment of their own regulating bodies. Combine these experiences with the feedback we are receiving through our consultations across the province, our government is confident in that this Act together with the accompanying regulations will be all encompassing.

I thank you, Mr. Chair, and I now would be pleased to have my officials and I answer any questions.

The Chair: — Thank you, Mr. Minister. This Act may be cited as *The Athletics Commission Act*. I would just ask the officials to identify themselves for the purpose of Hansard in answering questions. I'll open the floor to questions. Ms. Sproule.

Ms. Sproule: — Thank you. Thanks very much, Mr. Chair, and thank you to the minister and staff for coming out tonight on St. Patrick's Day and giving us an opportunity to ask some questions about this proposed legislation. I know the minister's had an opportunity to see some of the comments that I did make in the legislature when we were debating the bill, and I do want to follow up on a few of those comments because I do have some questions about a few of the points of the bill. But before I get into that I just wanted to ask first of all what the role of the Saskatchewan Martial Arts Association has been in the preparation of the bill.

Hon. Mr. Doherty: — Thank you, Mr. Chair. Thank you to the member. They were one of the organizations and groups that we consulted with during the drafting of this legislation, and they'll continue to be an organization we consult with in the drafting of the regulations.

Ms. Sproule: — And would you say . . . I'm interested to know that there's actually a lawsuit against that organization right now and I think the government's been named as well. So some of the allegations is that it's an exclusive kind of organization. And can you tell me how their membership is determined and why some people are being refused membership?

Hon. Mr. Doherty: — Well I want to differentiate to Ms. Sproule two different points. The Saskatchewan Martial Arts Association is for the amateur events in the province. The bill before us tonight will be, that we're discussing tonight will be for the regulation of professional mixed martial arts events and boxing events in the province. So two very distinct . . . So to regulate the amateur events in the province, we provided through an order in council the regulatory body or the regulatory function to be held by the Saskatchewan Martial Arts Association.

With respect to the lawsuit that you referenced, you know, I think it would be inappropriate for any of us to comment on that as it is before the courts, and you as a lawyer know that. But you're correct that there is a lawsuit been filed here recently.

Ms. Sproule: — So the SMAA [Saskatchewan Martial Arts

Association] deals with amateur events. And are those also . . . Like I don't know how the Criminal Code would apply to those. How does that order in council deal with the Criminal Code requirements?

Hon. Mr. Doherty: — So, Mr. Chair, the changes to the Criminal Code at the federal level deal with what used to be termed as prizefighting and is now professional events. So the difference between, obviously, amateur events and professional events are that there is a purse involved. There is money to be made for the participants in a professional event. The Criminal Code has made that illegal in Canada unless there is a provincial athletics commission formed to regulate that or devolve that authority to the municipal sector.

On the amateur side, they do not compete for purses. It is more of a training and development program, much like minor football or minor hockey or anything that kids would start off at an early age at. The federal government, through the Criminal Code, has said that amateur events obviously are allowed in the jurisdictions of the provinces if they're regulated by a body. It doesn't necessarily have to be an athletics commission, and we devolve that authority through order in council to the Saskatchewan Martial Arts Association as the regulatory body for amateur events in the province.

Ms. Sproule: — Thank you, Mr. Minister, and I guess we'll follow the proceedings as they go through the legal system and we'll observe as that goes along. So in terms of the professional or the prizefighting side of things here, the first question is, why did you decide to incorporate a law and not devolve this to municipalities, as other jurisdictions have done?

Hon. Mr. Doherty: — Well again, in looking at what's happening across the country, those that have athletics commissions, five of the seven jurisdictions that currently have this in place do it on a provincial basis. The other two, I believe it's Alberta and . . . who's the other one?

A Member: — New Brunswick.

Hon. Mr. Doherty: — Alberta and New Brunswick that have devolved it to municipalities, and my understanding is those two provinces are looking towards bringing it back to a provincial organization or a provincial athletics commission. And in Saskatchewan we discussed this at length, both in cabinet and in caucus and looking at what was appropriate for the province of Saskatchewan. We wanted to ensure there was consistency in the application of regulation across the piece, and that is best done through a provincial organization as opposed to devolving it to the different municipalities.

I will also add that the municipalities themselves didn't want it and asked the province to do that. So again, that there were consistencies across the piece with respect to all the different regulations involved. I think we even have some letters from municipal leaders asking the province to establish a provincial athletics commission, to that effect.

Ms. Sproule: — And is it your view that this will have application on the Indian reserves that are located within Saskatchewan?

[19:15]

Hon. Mr. Doherty: — Yes, thank you, Mr. Chair. In response to the hon. member's question, yes, it would apply to First Nations events held on-reserve. The Criminal Code of Canada is applicable on-reserve. And so First Nations, if they want to host a professional event, would have to make an application through the Athletics Commission like anybody else would.

Ms. Sproule: — Thank you. Now one of the things that confused me when I first started looking at this Act was the actual name of the bill itself, and I noticed that other provinces have chosen things like the competitive arts commission or mixed martial arts commission because athletics obviously is a very generic term that would apply across the board to all athletics. And so it appears to me a bit too vague for the goals of the legislation itself. So why did you choose to be a name that was so broad for a very specific purpose?

Hon. Mr. Doherty: — Thank you, Mr. Chair. And it's a good question. Certain jurisdictions, I'm advised, have used combative sports, have used mixed martial arts, and others have used athletics commissions. An athletics commission doesn't necessarily just mean with respect to combative sports, which could be boxing or mixed martial arts and those kinds of things. You could expand it to other types of professional events that an athletics commission could oversee.

So we felt it was broad enough that it provided us the opportunity that if we wanted to expand into other types of professional events that an athletics commission would oversee, we have that done in the original bill.

Ms. Sproule: — Can you give me an example of another type of professional event that may come under this bill?

Hon. Mr. Doherty: — So, Mr. Chair, I'm advised that there are a variety of different types of sports not necessarily classified as combative sports. There's everything from modified Muay Thai — and I've never witnessed that myself — to boxing, to kickboxing, to mixed martial arts. So there's different forms of this type of contact sport, if you will, that will be all-encompassing, and we will list those out in the regulations as specifically what they are. And the title of Athletics Commission seemed to encompass all of those, as opposed to being very prescriptive on combative sports themselves.

Ms. Sproule: — Thank you, Mr. Minister. I appreciate your answer. And I always find it more helpful to be more specific and descriptive, and I just find this to be a bit vague. But I understand why you chose that.

I had the same comments about professional contests or exhibitions because from a non-boxer world that I come from, those mean some very different things. So I think at all times we are looking for clarity in legislation and because I think you are addressing a very specific portion of a very specific type of sport.

Another comment I made in the debate was about the word matchmaker, because you have to have a licence to be a matchmaker. But any of us who watch movies, a matchmaker is something very different than I think what is intended by this

legislation. So it's just that words are tricky and semantics can lead to confusion if there isn't . . .

Hon. Mr. Doherty: — Mr. Chair, so I mean the matchmaker in this context has a very specific role to play in the sense that, particular in professional events, that you are literally matching up the participants. And it is important that you don't have someone who ought not to be in the ring fighting a number one contender or a champion, if you will, until they're ready to go into that type of contest. So the matchmaker themselves is very important in how they establish who's going to be competing against each other in these, in these professional events.

Ms. Sproule: — I guess that leads right into section 6 then of the Act, which talks about the licences. And I'm just kind of overwhelmed by the number of licences that are required for any particular contest or exhibition because the promoter needs a licence, the participant needs a licence, looks like a matchmaker officials will need licences, and anyone engaging in activities prescribed by regulations. So how many types of licences will the commission be issuing? Or maybe I'm reading this wrong.

Hon. Mr. Doherty: — So the member is correct, Mr. Chair, that all of those different individuals involved in a professional event would require a licence and to be licensed by the Athletics Commission. And that's to ensure that we have individuals who are certified in those roles, whether they be a referee or a matchmaker or a promoter. And all of those — or a combatant — all of those individuals will have to have been certified and have gone through the due diligence of the athletic commissioner to ensure that they meet the standards and regulations for competing or officiating at one of these events.

Ms. Sproule: — Thank you. Are there fees associated with each one of these licences? And how much will they be?

Hon. Mr. Doherty: — So, Mr. Chair, I'm informed that all of these folks that require a licence will have to pay an annual licence fee that has yet to be established. We'll do that in regulations.

Ms. Sproule: — One of the fees that is mentioned in the legislation is in section 24, where the event permit holder has to pay a prescribed fee, and that's calculated as 5 per cent of the gross gate receipts for the contest. One of the things I indicate in my comments is the concern with that type of fee is, you know, the cash aspect of these types of gates. And I know I've worked in other areas where lease fees are calculated based on the proceeds of the event. Is there any concern that, you know . . . Or I guess my question is, would it not be easier just to have a fee schedule? Or why did you choose the 5 per cent of gross gate receipts to establish the fee for the event permit holder?

Hon. Mr. Doherty: — That's the standard rate across the . . . when we were consulting with other provinces and other jurisdictions. However if you also look in there that subsection (2) of that same area talks about:

The commission may accept a lesser amount than the amount mentioned in subsection (1) that the commission considers appropriate in the circumstances if the commission is satisfied . . .

Then it goes through some other . . . So there are some provincial jurisdictions looking at flat fees and this will also allow us to do that if . . . There's a couple of different circumstances. If you have the regular Saturday night event, like they had an amateur event this past Saturday here in Regina I was aware of, but if you had a professional event, you could set a flat fee. If you have a major UFC [Ultimate Fighting Championship] event come into Credit Union Centre in Saskatoon, you might go with the 5 per cent per cent of gate receipts.

Ms. Sproule: — So when you refer to section 24(2), I'm looking at (b) and it says you can provide a lesser amount if the location makes it inappropriate to impose the fee. In what kind of circumstance would that happen?

Hon. Mr. Doherty: — So again if you're at an event at a local small-town arena or what have you and they're giving out comps or perhaps they're doing it as a fundraising event or whatever the case may be combined with a professional event there, you might establish a flat fee. If you're at a place again like CUC [Credit Union Centre] where it's just based strictly on ticket sales and there's a good accounting procedure for following those ticket sales, you could base it on 5 per cent per cent of gross gate receipts.

Ms. Sproule: — Thank you. I mean for lack of a better term, it sounds a little loosey-goosey to me. But that's the decision you've made and we'll keep an eye on that as it goes through and we'll see how these fees are being assessed. When will the regs be completed in terms of the fees that you're going to charge, or any other regs?

Hon. Mr. Doherty: — We're shooting for mid-June.

Ms. Sproule: — Thank you. One of my colleagues also spoke in his comments about benefits and sort of the disability benefits for people that engage in these types of sports. We know that . . . disability benefits. Obviously brain injury is something that's concerning in these types of combative sports. And has the ministry sort of taken into account those kinds of injuries, and is there any sort of discussion with the Ministry of Health about how these people will be looked after or are they expected just to get their own insurance?

Hon. Mr. Doherty: — So, Mr. Chair, obviously the safety of the participants is of utmost concern any time you're involved in professional sports, whether it's in football or hockey. And one of the reasons why it's important to have an athletics commission that has consistent standards across the province is precisely because of that. If you're monitoring and regulating a professional event such as could occur under these circumstances, you have history of the combatants' professional events and their medical histories that you have access to. And there is standardized regulation across the country such that if a person has been involved in a knockout, if you will, there is a time period that medical professionals determine they have to stay out of the ring until they meet the medical standard that the medical professionals determine that they're okay to go back into. With respect to your specific question, we are consulting with the medical association and the Ministry of Health on these kinds of standards. We want to try and be as consistent as possible across the country.

[19:30]

On the liability itself, those are the promoter's responsibilities. The professional promoters, which is what . . . We're getting away from the illegal promoters, if you will, those that haven't got the necessary liability insurance in place or standards for the safety of the participants . . . will be looked after by the promoters. And that's standard operating procedure across those jurisdictions that host these events as well, is that the promoters carry the liability insurance. In the event that someone is seriously injured and needs medical care, the promoters are responsible for that.

Ms. Sproule: — Just I guess one little follow-up on that. Are you aware of other provinces establishing a fighters organization? Like do they have a professional association in those other provinces?

Hon. Mr. Doherty: — My officials are not aware and I have not heard of any fighters association, if you will.

Ms. Sproule: — Just one last little set of questions and that's on the commission itself. It wasn't clear to me when I looked through the Act, and I want to make sure I am clear on this. Who exactly is the commission? Because when I look at section 3 where the commission is established, it looks like it's one person. It's the employee of the ministry. I know you've talked about the advisory committee. Are they part of the commission? Or is it just the one person?

Hon. Mr. Doherty: — So the commission itself is comprised of three parts. One is the actual commissioner, an individual. One individual, who is the actual commissioner, will be an employee within the Ministry of Parks, Culture and Sport, yet to be determined.

That individual, he or she will be advised by an expert advisory committee comprised of three individuals. And they could be people who have experience in professional boxing. They could be people who have experience in professional MMA type events. And where that expertise comes in handy is differentiating what I've used the term, is those fly-by-night promoters versus the ones who are legitimate in this industry.

And then the fifth person is an adjudicator, and the adjudicator is separate from both the commissioner and the expert advisory panel, in that they are the individual that a promoter could appeal to if they have been denied a licence or they have a dispute with the commissioner on a ruling. And the adjudicator has the wherewithal, as appointed by Lieutenant Governor in Council, to determine the outcome of that. Now they always do have the opportunity to appeal that to a court of law if they're not in agreement with an adjudicator's decision on that.

So that'll be the makeup of how the commission works itself.

Ms. Sproule: — I'm sorry. I think I'm still confused because in section 3(2) it says the commission consists of an employee of the ministry who is to be appointed and to serve as chairperson of the commission, but there's nothing else in that section that tells us whether there's anyone else. I really think the drafting is very confusing in this section, quite frankly.

And so for example, if you go to section 25, where it says notification by the commission, the commission shall not do anything without providing written notice. Are you saying the commission in that case would be all five of these people? Because I don't think that's what you mean.

And it's understandable for a commission to have an advisory committee, and it's certainly understandable . . . I understand the role of the adjudicator and the role of the advisory committee, but I don't understand how they can be part of the commission. I see their functions as quite different.

So either if section 3 told me that the commission consists of the following: (a) an employee of the ministry who is the chairperson, (b) an advisory committee, and (c) an adjudicator, then that would make sense to me. But I find this very confusing, and I'm just going to leave that with you because I think it's just really not clear. And so the roles become very confusing because then we have the adjudicator who doesn't do some of the things that the commission is doing. And the adjudicator's role is quite different than the role, if you ask me, of the commission.

So I don't know if you want to provide any comment on that or what your thinking is. Maybe it would be good if you could.

Hon. Mr. Doherty: — Mr. Chair, I mean I accept the member's concerns in reading legislation. And for us it's quite clear. There is one commissioner who is the chairperson of the advisory committee. So the three experts that advise the commissioner, that individual is the chairperson of that committee. The adjudicator is a completely separate individual that has responsibilities outside of any licence applications or those kinds of things that the commissioner would be responsible for, and basically is the appeal mechanism if a promoter or someone involved in a professional combative event had a dispute with the commissioner.

Ms. Sproule: — Thank you very much, Mr. Minister. With all respect, I do think it's not clear and you just described the adjudicator as being part of the commission and then you said he's not part of the commission, he or she. And I'm just . . . I really believe that some redrafting here would be very helpful to anybody who's going to be interpreting this Act in the future.

So you know, certainly an amendment of some sort to clarify exactly who's on the commission. The advisory committee is not mentioned at all in section 3 where the commission is established. So I think if you intended members of the advisory committee to be part of the commission formally, I think the drafting needs some work. And I don't know; other members of the committee may have some other comments on that. But I'm struggling a lot with trying to understand exactly what the commission is made up.

If I read section 3, it's an employee of the ministry. That's the entire commission. And so if you intend for the advisory committee to be part of the commission, then certainly section 3 should include a reference to the advisory committee as forming part of the commission.

If you look at all the powers of the commission in section 5, for example, obviously the adjudicator is not going to be doing any

of those things. So you wouldn't want the adjudicator to be described as part of the commission, as you pointed out yourself. So I am still confused and I think the drafting leaves something to be desired here and that an amendment would be in order.

I think at this point that's the extent of my comments. I don't know if the minister wants to reply or if other members of the committee would have questions.

Hon. Mr. Doherty: — Again, Mr. Chair, I would just simply . . . I mean I think we're taking two definitions of what the commission is. The commission could be something similar to a ministry, if you will. There is the ministry, and within the ministry you've got different functions and different roles. So within the commission, you have the commissioner. The commissioner serves or has an advisory committee that the commissioner chairs, so the three experts, and the adjudicator is part of the commission or as another employee is part of the ministry that has a completely separate function and role with inside the commission. So I think we might be confusing what the commissioner is versus what the commission is and we could, I suppose, debate semantics on that all night but that's how it is envisioned.

Ms. Sproule: — I just have one more comment then. I do appreciate the vision, but I think if you look at the definition of commission in your definitions, it says section 3. So there will be confusion. I'm just sort of forewarning. I'm trying to just . . . Okay, that's all I'll say at this point. Thanks.

The Chair: — Mr. Nilson.

Mr. Nilson: — My suggestion is that we adjourn this bill tonight to allow for some further work to clarify this because it's just going to cause problems for everybody in the province. And you can come back next week with some amendments which we then can approve. Because I think we all know what you're trying to do but it sure doesn't say it here in the document. So I would make that motion to adjourn this bill for further work.

The Chair: — Is that a motion, Mr. Nilson?

Mr. Nilson: — Yes.

The Chair: — Is it the pleasure of the committee to accept the motion?

Some Hon. Members: — No.

The Chair: — The motion is defeated. Is there any other comments on this bill?

Mr. Nilson: — I'll just make a comment. I guess my . . . There's no intention of causing a problem for this bill, so I encourage the government members of the committee to actually maybe have a bit of a caucus and a discussion before, you know, defeating my motion. Because practically what I'm trying to do is help the Justice lawyers and the department here to get a bill that will work because the way it is now it's going to be a problem.

The Chair: — Appreciate your comments, Mr. Nilson. Mr. Minister, do you have any . . . And you've kind of indicated that you feel confident in the terminology that's used to describe the bill?

Hon. Mr. Doherty: — I do, yes. And regulations are yet to come. We've been advised by Ministry of Justice officials in how this should be worded and I'm confident it's clear.

The Chair: — Thank you. Is there any other comments or questions pertaining to Bill 108, *The Athletics Commission Act*?

Mr. Nilson: — I'll just comment. I think that both of us who are here on the committee on behalf of the opposition have long experience dealing with legislation. And this bill, if we move it now, you're in a spot where you can't fix it very easily. And so my suggestion is that you just take some time here, 24 hours if you want or whatever, and take a look at this. We don't have a Justice lawyer in the room. I think there's two or three out in the hallway, but perhaps there could be some work here because if you end up with something that's not workable and you end up with a dispute involving a huge event at Credit Union Centre in Saskatoon, with 15,000 people, you'll end up with a major problem and no solution in the legislation.

The Chair: — Mr. Nilson, the motion was defeated. Seeing no further comments, we will proceed with the voting on this bill. Clause 1, short title. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 45 inclusive agreed to.]

[19:45]

The Chair: — Thank you. Her Majesty, by and with the advice and the consent of the Legislative Assembly of Saskatchewan, enacts the following: *The Athletics Commission Act*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That's carried. I would ask a member to move that we report Bill No. 108, *The Athletics Commission Act* without amendment. Mr. Phillips so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That is carried. Yes, Mr. Nilson.

Mr. Nilson: — Yes, I'd like to put on the record that we'll be happy to co-operate in any amendments that are necessary to fix this because I think there are really substantial problems in going ahead with this. But we'll be happy to co-operate however that's necessary.

The Chair: — Thank you for that. I appreciate the comments you've made. We will leave it up to the ministry and the officials to look into this and see if there's anything that they

deem that needs to be revisited and work that accordingly. Mr. Minister, that concludes this bill. Have you any closing comments you would like to make?

Hon. Mr. Doherty: — I'd just simply like to thank members for the questions and thank officials this evening for assisting in answering it.

The Chair: — Thank you, and thank you to your officials. This committee will take a brief recess of about three minutes in order to change the ministry and the officials.

[The committee recessed for a period of time.]

Bill No. 106 — *The Legal Profession Amendment Act, 2013*

The Chair: — Welcome back to the Standing Committee on Intergovernmental Affairs and Justice. We are here now in consideration of Bill No. 106, *The Legal Profession Amendment Act, 2013*. Welcome, Minister Wyant, and your officials. I will ask you to introduce your officials at this time.

Hon. Mr. Wyant: — Thank you, Mr. Chair. Tonight with me is Mary Ellen Wellsch, senior Crown counsel of legislative services branch from the Ministry of Justice, and Susan Amrud, associate deputy minister.

Clause 1

The Chair: — Thank you and welcome. We will start with clause 1, the short title. Mr. Minister, if you have any opening remarks, please proceed.

Hon. Mr. Wyant: — Thank you, Mr. Chair. Mr. Chair, I'm pleased to offer opening remarks concerning Bill 106, *The Legal Profession Amendment Act, 2013*. Mr. Chair, this legislation comes about as a result of a request from the Law Society of Saskatchewan for amendments to the Act to accommodate changes in the regulation of the legal profession and to streamline their processes.

The first major amendment is the new section 3.2, which reinforces the well-recognized principle that the protection of the public takes precedence over the interests of the member in any proceeding. This will serve as a reminder to the hearing committees and the courts when making their rulings.

The next change is the provision to the Law Society of the power to regulate law firms as well as individual members. Regulation of firms has become more common in professional regulation statutes in recent years. British Columbia and Nova Scotia in particular have provisions permitting regulation of law firms. Other professions such as the accounting profession, which is currently before the Assembly as Bill 112, will also have the ability to regulate firms.

Mr. Chair, the reason for the change is that lawyers who practise in firms often engage in conduct on a firm level that attracts the attention of the Law Society. For example, office accounting is generally a firm activity. Mr. Chair, there are currently 322 law firms in Saskatchewan.

The amendment to section 6 will permit the Law Society to

establish the number of benchers and their geographic representation through their rules. This will accommodate lower numbers of lawyers in rural areas, as rural volunteers are difficult to recruit.

An important safeguard is that any rules or rule changes in this regard must be confirmed by two-thirds majority of members in attendance at the annual general meeting for them to be effective.

The Law Society conducted 21 conduct investigations in 2013. There were 14 discipline hearings. This creates a tremendous amount of work for 21 volunteer benchers. For this reason, the provision respecting public representative benchers is amended to provide for not less than four public representatives. The number can be increased if it becomes advisable.

Also the restrictions on the constitution of investigations and discipline committees are removed to allow non-benchers and non-members to participate in discipline hearings. This is similar to the case in British Columbia.

In keeping with the amendments that were made to the discipline process in 2010, amendments are being made to the admissions and education process so that appeals from admission decisions can be made to a smaller panel of benchers rather than the full complement of benchers. This will provide flexibility and scheduling that will provide more timely decisions. Mr. Chair, the time limit on the delivery of discipline decisions is also being removed. This will provide increased flexibility for complex cases. Hearing committees will still be required to provide decisions in a timely manner.

Finally, an amendment respecting the Law Foundation will provide immunity for good-faith decisions made by members of the foundation.

Mr. Chair, those are my opening remarks, and I welcome any questions respecting Bill 106, *The Legal Profession Amendment Act, 2013*.

The Chair: — Thank you, Mr. Minister. We'll open the floor for questions. Before we do that, just to remind the officials to state their name if they are called upon to answer any of the questions. Mr. Nilson, the floor is yours.

Mr. Nilson: — Thank you and good evening. Did all of the changes that are made in this legislation today come from the Law Society or are there some that have come from other sources?

Hon. Mr. Wyant: — All the changes that are in this current bill were proposed by the Law Society of Saskatchewan.

Mr. Nilson: — It's clear from your explanation that there are a number of challenges around procedural issues for the Law Society. The first one relates to the discipline area. You've indicated that you've changed the number of public representative benchers from four to not less than four. Is there any intention at this time to appoint more than four public representative benchers, that's non-lawyer benchers?

Hon. Mr. Wyant: — There's no indication from the Law

Society that they want to appoint any more than four at this particular point in time. But certainly the bill will provide that flexibility in the future should they wish to do that.

Mr. Nilson: — Okay. In a subsequent section, there's a reference to making sure that a majority of the committee must be benchers in dealing with some of the investigations. Is there any concern that a majority of the committees would be lawyer benchers as opposed to public representatives, or is that not an issue?

Hon. Mr. Wyant: — That's not an issue. It could be either.

Mr. Nilson: — So at the present time it's possible to have a panel of four or three public representatives handling a discipline matter? Was that accurate?

Hon. Mr. Wyant: — There could be a public representative on any one panel, but the majority of the panel members will be benchers.

Mr. Nilson: — Okay, but aren't people who are public representatives — are they called benchers, too?

Hon. Mr. Wyant: — Yes.

Mr. Nilson: — So that didn't answer my question.

Hon. Mr. Wyant: — The majority will be benchers who are elected by the membership of the Law Society as opposed to lay benchers.

Mr. Nilson: — Okay. That was my question. So I guess I'm just trying to figure out if there are specific provisions that state that or if that's just practice?

Hon. Mr. Wyant: — It's the policy of the Law Society, so that's the practice that they follow.

Mr. Nilson: — Okay. Because, you know, I guess the traditional basis for professional legislation is being governed and ruled by your peers, and so that clause, the way it's worded, allows for a possibility that that could change, and that's why I'm asking that question. You know, is there an intention to state somewhere very clearly that that's one of the goals?

Hon. Mr. Wyant: — As you know, Mr. Nilson, the Law Society of Saskatchewan is a legal profession, it's a self-governing profession, so we allow the Law Society of Saskatchewan to set their own rules and regulations and policies with respect to such matters. And it is their, it's their policy that the majority of members on those panels will be elected members of the Law Society, and members in good standing of the Law Society. So we leave that to them to establish their policies as a self-governing profession.

Mr. Nilson: — Okay. But you are changing the law here to allow for there to be substantially more flexibility on that?

Hon. Mr. Wyant: — That's correct.

Mr. Nilson: — Well basically most lawyers don't get too wound up with all these clauses and so we have the distinct

privilege of being able to take a little closer look than some others do, and you know, part of it is it's our role to do that.

Is there or has there been any concern with the length of time for decisions coming from hearing committees? And is that why the 45-day rule is being changed or is this just a practical suggestion because sometimes they might get 50 days or something?

[20:00]

Hon. Mr. Wyant: — Well yes, there's a bit of that. In very, very complex cases, and as you know as a member of the Law Society, that there are some very complex cases that come before the Law Society, and the 45-day period was just seen as, in some cases, difficult to achieve. So this adds some flexibility. But as you know, the Law Society's bound by the rules of natural justice and so the decisions, or at least the deliberations and the decisions are to be made, you know, as quickly as possible. But that's just to add some flexibility. There was some concerns with respect to the timing in very, very complex cases.

Mr. Nilson: — I think maybe I just have one more question and that relates to this inclusion of the definition of firm in there. And I think the way that the definition of firm has been drafted here, it includes a sole proprietorship, partnership, corporation, two or more members holding themselves out to be operating out of the same office, or any other sort of business entity, but it doesn't include anything that, any entity that receives all or substantially all of its funding. So that's the two biggest law firms. Right? Government of Saskatchewan and Legal Aid. So they're not included in this definition. Is that . . .

Hon. Mr. Wyant: — That's correct.

Mr. Nilson: — Okay. So just so we're entirely clear that this relates to all of the other lawyers, if we can put it that way, and not those of us who serve in the legislature or who are in the government ministry. But I don't have any further questions, Mr. Chair, on this.

The Chair: — Thank you, Mr. Nilson. Are there any other questions or comments on Bill No. 106? Seeing none, we'll proceed with the voting on Bill 106. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 14 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts the following: *The Legal Profession Amendment Act, 2013*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That's carried. I would ask a member to move that we report Bill No. 106, *The Legal Profession Amendment*

Act, 2013 without amendment. Mr. Steinley so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Thank you.

**Bill No. 113 — *The Powers of Attorney
Amendment Act, 2013/Loi de 2013 modifiant
la Loi de 2002 sur les procurations***

Clause 1

The Chair: — Thank you. We will continue on with the consideration of Bill No. 113, *The Powers of Attorney Amendment Act, 2013*. This is a bilingual bill. We will start with clause 1, short title. Mr. Minister, if you have any opening remarks please present them now.

Hon. Mr. Wyant: — Thank you, Mr. Chair. I'll introduce the officials that are with me: Ron Kruzeniski, the Public Guardian and Trustee, and again Mary Ellen Wellsch, senior Crown counsel of legislative services in the Ministry of Justice.

Mr. Chair, I'm pleased to offer some opening remarks concerning Bill 113, *The Powers of Attorney Amendment Act, 2013*.

Mr. Chair, this legislation comes about as a result of a broad-based consultation that was conducted from 2011 to 2013 regarding legislative amendments to meet the needs of vulnerable adults. Officials from the ministries of Health, Social Services, and Justice prepared a list of individuals, agencies, and organizations to consult with about the issues surrounding legislation affecting vulnerable adults. The list included seniors' groups, financial services providers, lawyers, academics, groups representing persons with physical and intellectual challenges, and care providers as well as officials in the mental health field and directors of long-term care and home care in all regional health authorities. In total, over 100 people and groups were asked for comments.

This legislation has three main themes: gifts, fees, and accounting.

Mr. Chair, some uncertainty exists as to whether a person acting under a power of attorney can use the authority of that document to make gifts on behalf of the donor of the power of attorney, to be paid out of the estate of the donor. This bill will clarify that gifts can be made only in three circumstances. The first, a gift can be made if the power of attorney document specifically permits it. Second, a gift can be made if authorized by court order. And third, if the power of attorney document does not address the issue, if the granter does not need the money and the property guardian has reason to believe that the granter would have made the gift, a gift can be made in the amount not to exceed an amount prescribed in the regulations. These are substantially the same as the rules for property decision makers in *The Adult Guardianship and Co-decision-making Act*. The amount prescribed under that Act is \$1,000 in an annual accounting period.

Secondly, Mr. Chair, provisions respecting fees can be charged

by a donee of a power of attorney that are also modelled on *The Adult Guardianship and Co-decision-making Act*. The attorney can charge fees that are specifically set out in a document establishing his or her authority as authorized by court order or an amount prescribed in the regulations. Under *The Adult Guardianship and Co-decision-making Act*, the prescribed fees are two and a half per cent of the money received and two and a half per cent of the payments made.

Finally, Mr. Chair, there have been recent media stories which emphasize the need for proper accounting by the attorney, as well as the need for a watchdog. This Act will set out rules regarding when an accounting is required, who the accounting is to be provided to, and allow regulations to set out a standard form of an accounting. Accounting forms are prescribed under *The Adult Guardianship and Co-decision-making Act*. It is likely, Mr. Chair, that the same forms will be prescribed for in this Act. The Public Guardian and Trustee is given the power to determine whether the accounting is accurate.

Mr. Chair, there are additional housekeeping amendments which provide for the termination of the power of attorney on the making of an order pursuant to *The Missing Persons and Presumption of Death Act*.

Mr. Chair, those are my opening remarks and I welcome any questions respecting Bill 113, *The Powers of Attorney Amendment Act, 2013*.

The Chair: — Thank you, Minister Wyant. We'll open the floor for questions. Mr. Nilson.

Mr. Nilson: — Yes. Thank you and good evening, especially Mr. Kruzeniski. It's good to see you.

The first question I have is, is there a report that was prepared as a result of all of the consultations that you talk about in this, you know, as it relates to this legislation? And the reason I ask that is that clearly the amendments in the next three pieces of legislation all relate to some of the same consultation. And so I'm not sure if there is a written document that the public would have access to.

Hon. Mr. Wyant: — There was a written report that was prepared based on the consultations.

Mr. Nilson: — Okay. And so perhaps can you reference that so that we can have it on the record so that if somebody wants to look for it . . . Because I assume it's online somewhere?

Hon. Mr. Wyant: — We're just going to check on that, Mr. Nilson. It may well have been just advice to the minister with respect to the results of those consultations.

Mr. Nilson: — Okay. No, the reason I ask that, I just know that this whole area of the law raises lots of questions for people and the more public information that you can have, the easier it is for everybody. Because I think from what I've heard and what I've seen, you've got some very good suggestions here about how to deal with the next generation of issues that arises under this kind of legislation. But if it would be possible to see what the consultation documents were like, that would be I think helpful for the public. So I will leave that for now and if it is

possible to get the information for later, that would be helpful.

The areas of suggestion here, am I accurate in saying that you've taken the experience under the Public Guardian's work and translated it into some rules for powers of attorney for people who don't have as much experience as the Public Guardian?

Hon. Mr. Wyant: — Yes, I think that's correct to say that there was certainly some work that was done with respect to that legislation and, as I referenced in my earlier comments, translated over to this draft bill.

Mr. Nilson: — And I think, you know, the public will be pleased with that because powers of attorney always have been a bit mysterious and a bit misunderstood and abused. And so what it looks like you're doing is setting some very clear parameters on what powers of attorney can do in many different situations.

The issue of gifts is an interesting one because there are often people around somebody who no longer has capacity that would like some gifts, but there hasn't been a mechanism to do that. Can you explain where this idea came from and maybe how it's worked under other legislation?

Hon. Mr. Wyant: — Yes. Well certainly we heard lots of input as a result of the discussion paper, but the provisions are based on section 63.1 of *The Adult Guardianship and Co-decision-making Act*. So that's the basis of the change.

Mr. Nilson: — And so basically you'll have the same rules in both places? Is that an accurate assessment?

Hon. Mr. Wyant: — That's correct.

Mr. Nilson: — And I think I understood you to say that it's intended that the upper limit of the gift would be \$1,000 if there's no specific mention of a gift in a power of attorney. Was that accurate?

Hon. Mr. Wyant: — It will be set out in the regulations, and I think my opening comments just simply referred to the fact that that was the number that's in regulations under *The Adult Guardianship and Co-decision-making Act*. But that will be set in the regulations.

Mr. Nilson: — Can you refresh my memory as to how one charges fees for exercising of a power of attorney without the fee schedule we've got here? What happens now?

Hon. Mr. Wyant: — I'll have Mary Ellen Wellsch answer the question.

Ms. Wellsch: — Mary Ellen Wellsch. The Act now says the attorney is entitled to reasonable fees. Reasonable, there's no really good way to determine what's a reasonable fee without having a court set that, so either the beneficiaries have to consent to the reasonable fee or the attorney has to go to court to get the fees set.

Mr. Nilson: — Okay. So what this is proposing is that there would be a general rule that follows what's being done in other

similar areas and so that going to court isn't a necessity if it's not set out. Okay. Well no, I think that's a good idea. It makes sense and I think that's the kind of explanation as to why that fee is there because I think . . . And the fees, as I understand it, are going to be specified in the regulations. Is that correct?

Hon. Mr. Wyant: — Yes, although they haven't been determined, they will be set out in the regulation. It will have some reference to the . . . As you know that's under *The Adult Guardianship and Co-decision-making Act*. There's a fee schedule in there, and we will look to that for some guidance, I think.

Mr. Nilson: — Right, and the regulations under that Act as well. Is that correct? Yes. Okay. So I think that makes sense in how that's done, so I don't have any more questions about that.

Now the next area is the power of the Public Guardian and Trustee to investigate the accuracy of accounting. Is this something that is a new remedy or is it done anywhere else or is this once again translating something from another Act into this area?

Hon. Mr. Wyant: — There were recent amendments to *The Adult Guardianship and Co-decision-making Act* that added new provisions respecting the provision of accounting and establishing timelines for filing and requiring forms. And the intention is that this Act will follow what's in that legislation.

[20:15]

Mr. Nilson: — Okay. Once again I think that's a good idea, and it provides clarity for people in an area where it's been difficult over the years to know exactly what advice to give people actually on that.

If it's required that the Public Guardian and Trustee steps in to do the accounting or to assess the accounting, are there fees that will be payable to the Public Guardian and Trustee to do that work?

Hon. Mr. Wyant: — There will be no fees payable for that.

Mr. Nilson: — Okay. Well that's part of the good service that we're getting from the Ministry of Justice, so we'll be happy to have that continue. I suspect it won't happen that often, so it's not a huge burden on the treasury. But I think it is good to have a place that is a final arbiter other than going to the court because that's what's been there before.

Mr. Chair, I have no further questions. I think this is good legislation and, if possible, I look forward to having the consultation reports made public at some point if that's possible.

The Chair: — Thank you, Mr. Nilson. Are there any other comments or questions regarding Bill 113? Seeing none, we will proceed with the voting on Bill 113, *The Powers of Attorney Amendment Act, 2013*. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 10 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts the following: *The Powers of Attorney Amendment Act, 2013*. This is a bilingual bill. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 113, *The Powers of Attorney Amendment Act, 2013*, the bilingual bill without amendment. Mr. Tochor. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Thank you.

Bill No. 114 — *The Health Care Directives and Substitute Health Care Decision Makers Amendment Act, 2013*

Clause 1

The Chair: — Thank you. We will now proceed with the consideration of Bill No. 114, *The Health Care Directives and Substitute Health Care Decision Makers Amendment Act, 2013*. We will start with clause 1. Mr. Minister, do you have opening remarks regarding this bill?

Hon. Mr. Wyant: — Thank you again, Mr. Chair. Again with me, Ron Kruzeniski, the Public Guardian and Trustee, and Mary Ellen Wellsch, senior Crown counsel, legislative services branch.

Mr. Chair, I am pleased to offer some opening remarks concerning Bill No. 114, *The Health Care Directives and Substitute Health Care Decision Makers Amendment Act, 2013*.

Mr. Chair, once again this legislation was part of the broad-based consultation that was conducted from 2011 to 2013. We were told about the difficulties in making day-to-day decisions for incapable adults who are residing in homes if there's not ready access to health care decision makers. We were also told about the lack of clarity regarding who had authority to place an adult in long-term care on discharge from a hospital, if the adult lacks capacity to make a decision about where he or she resides.

Mr. Chair, this legislation addresses both these points. First, it gives the caregiver the authority to make day-to-day treatment decisions for an individual in that person's care if neither a proxy, nearest relative, or personal guardian is readily available. Both caregiver and day-to-day decisions will be defined in the regulations. Mr. Chair, more consultation is required to reach a consensus on the meaning of both those terms.

Secondly, Mr. Chair, we heard, especially from the health care community, about the difficulty with finding the appropriate authority to place a person in long-term care when that person is

discharged from a hospital but is clearly not able to return home. The new section 18.1 establishes the priority of who can make that decision when the adult does not have the capacity to make the decision: personal guardian, proxy, nearest relative, or two treatment providers, in that order.

Finally we heard that there was some confusion in the community about the authority of an enduring power of attorney to make health care decisions. The amendment to section 21 makes it clear that the person acting under an enduring power of attorney does not have that ability.

Mr. Chair, with those opening remarks, I welcome your questions respecting Bill 114.

The Chair: — Thank you, Minister Wyant. We will proceed with any questions. The Chair recognizes Mr. Nilson.

Mr. Nilson: — Thank you, and I'm assuming these questions will continue from the same consultation that was done as it relates to the other legislation. So that you've identified some very straightforward issues that need to be dealt with, and I think my initial review of this had me agreeing with how you've come up with it.

But I was surprised to hear you say that there's going to be further definition in the regulations and you have to do more consultation on that. So as it relates to day-to-day treatment, what are the issues that are the most pressing here? And where and what do you have to define by regulation?

Hon. Mr. Wyant: — Well it was clear to us from the consultation that certain day-to-day decisions were fairly obvious — you know, dental appointments, those kinds of things. But the extent to which that needs to be extended, you know, in terms of the definition, we wanted to make sure we had some further consultations so that we were very, very clear on what was included in that definition. But certainly as a result of the initial consultation, some things were very clear, but others weren't. And so we wanted to make sure we had some further dialogue.

Mr. Nilson: — And so how soon will those regulations be prepared and ready to go?

Hon. Mr. Wyant: — It's our expectation that we'll be consulting over these over the summer.

Mr. Nilson: — And so then they'll be available in the fall, would be the plan then?

Hon. Mr. Wyant: — That's our expectation.

Mr. Nilson: — Okay. We won't have any sort of 24-hour push like we had last week?

Hon. Mr. Wyant: — Well we'll be doing some fairly . . . some consultation along, you know in terms of who was consulted with as far as the other legislation was concerned. So we'll be taking our time to make sure that we get the definitions right.

Mr. Nilson: — Okay. The definition of caregiver represents, once again you say like a regulation to set up who that caregiver

is. Can you give a bit of an idea who that might be? And does it include staff within health region or is this outside of health regions or why is it not even a hint here of who it is?

Hon. Mr. Wyant: — Perhaps I'll put it . . . Within a care home it's our expectation that the highest level of caregiver in that care home would be someone who would be designated as a caregiver for the purposes of the definition. But again every facility may be different, and certain groups may have different opinions as to who should be designated as a caregiver. So while I have an expectation that that's at least the basis of the definition, there may be some more that comes of that and more people being designated as a result of the consultation.

Mr. Nilson: — Okay so then that whole provision . . . And so is what you're saying that this section, the new section 17.1, basically applies to personal care homes only or does it also include long-term care or as we used to call level three and four care?

Hon. Mr. Wyant: — It would be all forms of care homes, long-term care or personal care homes.

Mr. Nilson: — Okay. So this legislation doesn't try to tie itself in to the health legislation and definitions and assessments that are made there?

Hon. Mr. Wyant: — No.

Mr. Nilson: — No. I think that's what would I . . . It makes more sense to have a broader term, but I think one of the things you may want to look at carefully is to make sure that you don't define some of these terms differently than the terms might be defined in other pieces of legislation because that could cause other problems with the legislation.

When the whole issue of long-term care, I notice basically you've got the definition of nearest relative in the existing legislation and that what this does is add basically a provision for two treatment providers after the nearest relative. Is that how I should interpret this?

Hon. Mr. Wyant: — Yes, it would be the proxy, the nearest relative, or the personal guardian. But that's right. It would be the two health care providers would be the last in the chain.

Mr. Nilson: — Okay. And so once again, that's an area where you're going to try to define those in regulations. Is that correct?

Hon. Mr. Wyant: — They're defined in the Act.

A Member: — In the current Act.

Hon. Mr. Wyant: — Sorry, they're defined in the current Act.

Mr. Nilson: — In the current Act, okay. And you're just going to continue to use that definition then. Yes, okay.

Well I'm, as you can tell, just asking questions about it raises all kinds of possible combinations. And you know, I laud you for trying to sort this out. And clearly the regulations will have to be as straightforward as possible.

One of the other questions that I had when I was just looking at this is, is there going to be at some point an attempt to put these different types of piece of legislation in the same Act so that you'll deal with issues that where people, the public sees an overlap? Because right now it takes a fair bit of work to figure out which particular decision happens where. And is there any intent to consolidate this whole area of the law?

Hon. Mr. Wyant: — We haven't within the ministry had any discussions about consolidating the legislation, Mr. Nilson. I mean there are discrete pieces of legislation with discrete purposes. And so they're separated, but we haven't had that dialogue.

Mr. Nilson: — I just make the suggestion that that might be important because, as far as the public's concerned, they don't know whether the decision about grandpa is in which of these different pieces of legislation, which is why there's some problems, obviously. But once again I think the suggestions you've got here are good, but you've got a lot of work to go still and I look forward to seeing those results. So I have no further questions.

The Chair: — Thank you, Mr. Nilson. Any other comments, questions regarding Bill No. 114, *The Health Care Directives and Substitute Health Care Decision Makers Amendment Act, 2013*? Just one comment — we couldn't get a shorter title, could we?

Seeing that, we'll proceed with the voting on this bill. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 8 inclusive agreed to.]

[20:30]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts the following: *The Health Care Directives and Substitute Health Care Decision Makers Amendment Act, 2013*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 114, *The Health Care Directives and Substitute Health Care Decision Makers Amendment Act, 2013* without amendment.

Mr. Marchuk: — I so move.

The Chair: — Mr. Marchuk. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Thank you.

**Bill No. 115 — *The Public Guardian and Trustee
Amendment Act, 2013***

Clause 1

The Chair: — We will now proceed with the consideration of Bill No. 115, *The Public Guardian and Trustee Amendment Act, 2013*. We will start with clause 1, short title. Mr. Minister, if you have any opening remarks, please proceed.

Hon. Mr. Wyant: — Thank you, Mr. Chair. Again with me, Ron Kruzeniski, Public Guardian and Trustee, and Mary Ellen Wellsch, senior Crown counsel, legislative services branch in the Ministry of Justice.

Mr. Chair, I'm pleased to offer some opening remarks concerning Bill 115, *The Public Guardian and Trustee Amendment Act, 2013*. Mr. Chair, as previously stated, this legislation was also part of the consultation respecting vulnerable adults. The main amendment that has resulted from those consultations was the change in terminology from incompetent and "of unsound mind" to lacking capacity.

One significant amendment in this legislation is the transfer of the certificate of incapacity provisions from *The Mentally Disordered Persons Act* to *The Public Guardian and Trustee Act*. Those provisions have been in *The Mentally Disordered Persons Act* and previously *The Mental Health Act* since 1961. They remain the only provisions in *The Mentally Disordered Persons Act*, which can now be repealed.

Some things about the certificates of incapacity are changing in this version. First, an examination for capacity can be done by a physician without a referral from a chief psychiatrist. Second, the chief psychiatrist can limit examinations for capacity to once every six months. It is currently once every year. Otherwise the process remains the same.

A small but important amendment is the new subsection 28(3.1) which allows an acknowledgement to act, signed by the Public Guardian and Trustee, to be revoked in certain circumstances. The acknowledgement, when signed, cancels the power of any property guardian or power of attorney. With this new power those can be reinstated, if appropriate.

Lastly, Mr. Chair, the Public Guardian and Trustee often acts for dependent adults whose estates are small. When that person dies it is often not necessary for the survivors to obtain formal letters of administration or letters probate. The amendment to section 31 allows the Public Guardian and Trustee to protect the estate until a person comes forward to assume control of the assets.

Mr. Chair, those are my opening remarks and I welcome any questions with respect to Bill 115.

The Chair: — Thank you, Mr. Minister. We'll proceed with questions. Mr. Nilson.

Mr. Nilson: — Yes, thank you. Can you please explain the thought behind the transfer of the traditional sort of incapacity law into this, this Public Guardian and Trustee Act, from the old legislation? I know the name was not very helpful, but is that

the only reason or has there been a change in just in the whole way that the law works?

Hon. Mr. Wyant: — The only reason that a certificate of incapacity would be issued is to give the authority to the Public Guardian and Trustee. So that's why it's being moved over to this legislation.

Mr. Nilson: — And so this only relates to the property issues that were I guess related to somebody who has mental health difficulties?

Hon. Mr. Wyant: — That's correct.

Mr. Nilson: — Okay. So then now the new scheme will have anything related to competence and personal health and basically what . . . locking somebody up because they're a danger to themselves or their community, that'll all be dealt with under health legislation and all of the property issues will be dealt with under *The Public Guardian and Trustee Act*. Is that correct?

Hon. Mr. Wyant: — That's correct, Mr. Nilson.

Mr. Nilson: — So are there any substantial changes in the provisions that were under the previous mentally disordered persons Act?

Hon. Mr. Wyant: — Only the ones that I'd mentioned in my opening comments. But apart from that, there's no changes.

Mr. Nilson: — So basically we have the same regime. It's just, for people to look for it, you have to find it in a different spot and it's being administered through the Public Guardian. Is that correct? Which is presumably a more reasonable cost to access it than previously. Is that correct?

Hon. Mr. Wyant: — The Public Guardian and Trustee was responsible under *The Mentally Disordered Persons Act* so the idea is to move it into one piece of legislation and ultimately repeal *The Mentally Disordered Persons Act*.

Mr. Nilson: — Okay. That sounds reasonable. The provision related to allowing a physician who is not a psychiatrist to make some of these assessments, can you explain what the rationale is there?

Hon. Mr. Wyant: — Well many of the cases with respect to incapacity aren't, you know . . . It could be related to aging, not necessarily ones related to psychiatric problems. And so it seemed reasonable that a physician who is in a position to make that determination, make that determination for those purposes. So that's the reason for the change.

Mr. Nilson: — Okay. But the situation where somebody doesn't agree with that assessment of them, they can still then appeal to a panel as it used to be, or as it is under the legislation. Is that correct?

Hon. Mr. Wyant: — There's an appeal process and ultimately to the court.

Mr. Nilson: — Yes. Then the other changes that you have here,

there's one other one that I was going to ask about and that relates to the provision under the, I think it's called the . . . It was *The Absentee Act* but it's now changed to *The Missing Persons and Presumption of Death Act*. Can you explain what problem this change is fixing? Or is there any change at all, other than a reference to the Act?

Ms. Wellsch: — Mary Ellen Wellsch. There really is no change at all. *The Absentee Act* was repealed a few years ago and replaced by *The Missing Persons and Presumption of Death Act*. If a person is a missing person, a committee can be appointed by the court, which is the same as a committee or a property guardian being appointed pursuant to *The Adult Guardianship and Co-decision-making Act*, or a declaration of death can be made, in which case letters probate or letters of administration are issued. So it's the same net effect.

Mr. Nilson: — Okay. And it will all be handled under this legislation, so okay. Well that, I think that's the extent of the questions that I have. And once again, it appears that there are little changes that are made to make it easier for people to use the services of the Public Guardian and Trustee, and basically when the amounts involved are small, to allow for decisions to be made by the Public Guardian. And I think that makes sense and the public can be happy with that.

I appreciate the work that is done in this whole area and I thank you. Thank you on behalf of the public for tackling this whole area. But I'm certain that within five years there'll be another whole batch of questions and you'll be back in front of the legislature with some more changes. But that's just part of the process.

So thank you very much for your comments and I have no further questions.

The Chair: — Thank you, Mr. Nilson. Any other questions or comments to the ministry regarding Bill No. 115, *The Public Guardian and Trustee Amendment Act, 2013*?

Seeing none, we will proceed with the voting on this bill. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 24 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts the following: *The Public Guardian and Trustee Amendment Act, 2013*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 115, *The Public Guardian and Trustee Amendment Act, 2013* without amendment. Mr. Phillips. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That is carried. Thank you, gentlemen. That concludes the bills we had for discussion tonight. Mr. Minister, do you have any closing remarks?

Hon. Mr. Wyant: — Just to say a few thank yous, Mr. Chair. First of all to you and your committee, thank you very much for taking the time this evening. Mr. Nilson, for your questions and especially for your recognition of the work that our ministry has done, thanks for that. I'd also like to thank the ministry officials that are here tonight, taking time out of their evening to be here to help out. So thank you very much for all your time.

The Chair: — Thank you, Minister Wyant, and your officials. Thank you for being out here. Committee members, thank you. I would ask a member to move a motion that we now adjourn. Mr. Tochor so moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That is carried. Thank you, and have a good St. Patrick's Day evening.

[The committee adjourned at 20:43.]