

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 8 November 1988

DENTAL BILL

Proposed Amendments

Hon. DAVID CAYGILL, in Committee, to move the following amendments:

New clauses 38HA and 38HB: To insert, after clause 38H on pages 26 and 27, the following clauses:

“38HA. Liability of employer for practice of dentistry by unregistered employees—(1) Where an offence is committed against section 38A of this Act by any person acting as the employee or agent of any other person, that other person shall also be liable under that section in the same manner and to the same extent as if that other person had personally committed the offence.

“(2) It shall be a good defence to a charge brought under subsection (1) of this section if the defendant proves that the offence was committed without the defendant’s knowledge and that the defendant took reasonable precautions and exercised due diligence to prevent the commission of the offence.

“38HB. Offence to direct employee to practise dentistry in manner detrimental to welfare of patient—(1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000, who, knowing that the practice of dentistry in a particular manner is or could be detrimental to the welfare of any patient, directs his or her employee or agent to practise dentistry in that manner.

“(2) No person shall be convicted of an offence under this section unless—

“(a) As a result of that person’s direction, the employee or agent has practised dentistry in the manner directed; and

“(b) The employee or agent has, in respect of that practice, been found guilty by a Disciplinary Tribunal under section 46 (1) (b) of this Act.

“(3) Any certificate given by the chairperson of the Disciplinary Tribunal stating that the employee or agent has, in respect of any specified practice, been found guilty under section 46 (1) (b) of this Act shall, in any proceeding under this section, be sufficient evidence of the matters stated”.

Clause 38J (5): To omit from line 7 on page 28 the expression “\$200”, and substitute the words “\$1,000, and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day on which the offence has continued,”.

Clause 38ZE: To omit from line 29 on page 40 the expression “\$1,000”, and substitute the expression “\$5,000”.

Clause 46A (1) (d): To omit from line 32 on page 58 the expression "\$1,000", and substitute the expression "\$5,000".

Clause 53 (2): To omit from line 39 on page 67 the expression "\$200", and substitute the expression "\$500".

Clause 55F: To omit paragraph (b) (all the words in lines 29 and 30 on page 72), and substitute the following paragraph:

"(b) One person who is employed in dental education appointed by the Minister:"

EXPLANATORY NOTE

New clause 38HA: The proposed clause provides that an employer is liable if his or her employee or agent acts in contravention of *clause 38A* of the Bill (which makes it an offence, among other things, for unregistered practitioners to practise dentistry except in accordance with the exemptions provided by the Bill). The employer will be liable to the same penalty as if the employer had personally committed the offence.

New clause 38HB: The proposed clause makes it an offence for any person, knowing that the practice of dentistry in a particular manner is or could be detrimental to the welfare of any patient, to direct his or her employee or agent to practise dentistry in that manner. The proposed clause provides that no person can be convicted of such an offence unless, as a result of that person's direction, the employee or agent actually practised dentistry in the manner directed and has, in respect of that practice, been found guilty by a Disciplinary Tribunal under *clause 46 (1) (b)* of the Bill. The offence carries a maximum penalty of \$5,000.

The next 4 proposed amendments increase certain of the penalties contained in the Bill.

Clause 38J (5): The proposed amendment increases from \$200 to \$1,000 the maximum fine to which a person may be liable for an offence under the section. The section prohibits a person from practising as a dentist or as a clinical dental technician or as a dental technician unless he or she is the holder of an annual practising certificate. The proposed amendment also provides for a further fine not exceeding \$100 for every day during which the offence continues.

Clause 38ZE: The proposed amendment increases from \$1,000 to \$5,000 the maximum fine for offences relating to registration. A person commits such an offence who, for the purpose of obtaining a certificate under *Part IIIb* of the Bill,—

- (a) Makes any declaration or representation that, to his or her knowledge, is false or misleading in a material particular; or
- (b) Produces to the Council or the Board or makes use of a document knowing it to contain any such declaration or representation, or knowing that it is not genuine.

Clause 46A (1) (d): The proposed amendment increases from \$1,000 to \$5,000 the maximum fine that may be imposed by a Disciplinary Tribunal after finding a practitioner guilty of a disciplinary offence under *clause 46* of the Bill.

Clause 53 (2): The proposed amendment increases from \$200 to \$500 the maximum fine that may be imposed for wilful failure to comply with *clause 53 (1)*. That subclause requires a person whose name has been removed from the register or whose registration has been suspended to return all current certificates that have been issued under the proposed Act.

Clause 55F: The Bill currently provides that the Head of the Department of Health Services at the Central Institute of Technology shall be a member of the Dental Technicians Board. This amendment provides instead for one person employed in dental education appointed by the Minister to be a member of the Board. This will give more flexibility.