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Lundi 10 décembre 2001

Standing committee on justice and social policy

Rescuing Children from Sexual Exploitation Act, 2001

Comité permanent de la justice et des affaires sociales

Loi de 2001
sur la délivrance des enfants
de l'exploitation sexuelle

Chair: Toby Barrett
Clerk: Tom Prins

Président : Toby Barrett
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

Monday 10 December 2001

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE ET DES AFFAIRES SOCIALES

Lundi 10 décembre 2001

The committee met at 1605 in room 151.

RESCUING CHILDREN FROM SEXUAL EXPLOITATION ACT, 2001

LOI DE 2001 SUR LA DÉLIVRANCE DES ENFANTS DE L'EXPLOITATION SEXUELLE

Consideration of Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act / Projet de loi 86, Loi visant à délivrer les enfants prisonniers de la prostitution et d'autres formes d'exploitation sexuelle et modifiant le Code de la route.

The Chair (Mr Toby Barrett): Good afternoon, everyone. Welcome to this regular meeting of the standing committee on justice and social policy for December 10, 2001. We are considering Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act. The agenda for today is clause-by-clause. I would begin by asking are there any comments, questions or amendments to any section of the bill and, if so, to which section? Does anyone wish to make any opening remarks?

Mr David Tilson (Dufferin-Peel-Wellington-Grey): For the record, I have asked William Bromm to join us at the table. He is with the Ministry of the Attorney General. Members of the committee, throughout our deliberations, may have questions of him. I presume that members have no problem with him sitting with us.

Mr Peter Kormos (Niagara Centre): People may recall that I was one—and not alone—of the people in the assembly who wanted hearings on this matter and have concerns about the bill. I am appreciative, therefore, of Ministry of the Attorney General lawyers being here. We've got two days for the hearings. I want to make it clear that I want some explanations of the impact of any number of sections and proposed amendments. In that respect, I'm grateful to Mr Bromm for being here.

The Chair: Mr Bartolucci, any opening remarks?

Mr Rick Bartolucci (Sudbury): No, I'll deal with them when we go through the amendments.

The Chair: We could begin with section 1 and continue in sequence. With respect to section 1, we do have a Liberal amendment, a motion found on page 1.

Mr Bartolucci: I move that subsection 1(2) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Sexual exploitation

"(2) For the purposes of this act, a child is sexually exploited for commercial purposes or is at risk of sexual exploitation for commercial purposes if it is reasonable to believe that the child has engaged in a sexual activity, for the financial or other gain of the child or another person, including,".

The Chair: Any further comments, Mr Bartolucci, on that motion?

Mr Bartolucci: No. I think it is self-explanatory.

Mr Michael Bryant (St Paul's): I agree.

Mr Kormos: My understanding is the amendment deletes "or will engage in a sexual activity." I want to make sure that I'm clear on that. I would ask Mr Bartolucci to explain the motive for the amendment.

Mr Bartolucci: There is the opportunity in the bill, the way it is written, to in fact corral someone who is not involved in this activity. Therefore, as a safeguard, I would suggest that, through this rewriting of that section, we avoid what some might deem to be a violation of human rights.

Mr Kormos: Then I would ask for Mr Bromm's assistance. I appreciate that "child" is defined here as being "an individual who is under 18 years of age." I would ask Mr Bromm if it is prima facie illegal in Canada for a person to engage in sexual activity for the financial gain of that person? Is it against the law to be a prostitute?

Mr William Bromm: I'm not a criminal lawyer—I have to clarify that—but my understanding is that, no, it is not against the law to be a prostitute, per se, but certain activities related to prostitution—communicating, procuring, living off the avails—are illegal.

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Mr Kormos: I would ask, then, the parliamentary assistant, how does this bill take heed of the fact that prostitution is prima facie, as I understand the law as well, legal? That is to say, it is not illegal. The word "legal" is bad because it implies that somehow it is regulated or somehow that it is codified. The act of prostitution is prima facie not illegal in Canada. How does the bill jibe, then, in the context of that reality? Because I assume we accept that premise.

Mr Tilson: I'll ask Mr Bromm to respond.

Mr Bromm: The most important thing, of course, is that the intention of the bill is not to create criminal activity or to punish anyone for criminal activity. It is basically child protection legislation. The courts in Canada have held that children in these situations can be deemed to be children in need of protection and therefore subject to certain provisions that would allow them to be removed from those situations. That's how the reconciliation takes place: one, it's not aimed at criminal activity, it's aimed at protecting children from certain situations; and the second being that this kind of sexual exploitation is among those circumstances in which the court has recognized that, yes, those are children who need protection.

Mr Kormos: I don't quarrel with that because I've read the Child and Family Services Act and that's the legislation you're talking about, that the courts have made it clear there could be an intervention should a child, under the definition of the Child and Family Services Act, be involved in this type of activity.

Mr Bromm: Also in the situation of Alberta's—the PCIP legislation, I keep calling it—Protection of Children Involved in Prostitution Act, which is specifically aimed at this population of children as well, it has been reviewed by the courts and the same was held; that is, this legislation is aimed at child protection purposes, it is a legitimate provincial aim, and therefore the legislation is appropriate for a provincial Legislature.

Mr Kormos: I don't know where the government stands on the motion, Chair. I should indicate that I find the motion preferable to the bill because it narrows the contemplation by a person effecting an intervention to one where there's reasonable grounds to believe. But I suppose having said that, surely there are circumstances—and if you're taking an interventionist approach you would not want to necessarily always do it after the fact. I know Mr Bartolucci has been an advocate for the bill and its spirit in his own right, in his own legislation, a private member's bill, I believe at least one—

Mr Bartolucci: Three.

Mr Kormos: Three private member's bills. I'm wondering whether Mr Bartolucci perceives this as protective or prophylactic in its own right in terms of preventing challenges. Is this designed to charter-proof the government's bill or is it in and of itself intended to narrow the scope of activities that can be contemplated for intervention?

Mr Bartolucci: I think both. Let me give you the example that was given to me just a week and a half ago that makes an abundant amount of sense. The way the government has it written is that if, for example, my daughter happened to be walking down the kiddie stroll in Sudbury, going from the shopping centre, called the City Centre, to the Mary-Marg Shoppe, another very nice dress store, she would be able to be picked up because the police officer could surmise that she was there "for the purpose of." By rewriting it, it does not change the intent of the protection of children but ensures that human rights are not violated with the way it is written.

Mr Kormos: Not wanting to belabour it, Chair, but I might then go to the language here. It appears to be very specific language, "if it is reasonable to believe." Is this the parallel of reasonable and probable grounds that I, quite frankly, am more familiar with?

Mr Bromm: Yes. You would still have to establish when you picked up a child that you had reasonable and probable grounds to believe that they had either engaged in previous conduct or they are likely to engage in that conduct. We actually reviewed with both the police and the child protection workers the example of a child who was just in a certain location, when we talked to them about the particular legislation. They really had two positions. One, of course, they're not going to just pick up a child without talking to them at the time to find out what the exact situation is. The second is that's the reason why the courts have to hold a show-cause hearing within a certain amount of time, so that they do have to demonstrate that they had reasonable grounds beyond just the child being in a certain location. They thought that this particular language was important so that they wouldn't have to prove there was past conduct; that you shouldn't have to wait for a child to be exploited before you can remove them from a dangerous situation, and that's what the amendment would actually do: it would limit the scope of their apprehension powers.

Mr Kormos: Just one more, Chair: why didn't you use "if there are reasonable and probable grounds to believe that the child has engaged in or will engage in"?

Mr Bromm: The reasonable grounds standard is just reflecting the civil standard for warrants. It's the same standard that's in the Child and Family Services Act, for example. Actually, the reasonable grounds is now the recognized standard. The reasonable and probable grounds is an older standard that everyone always goes back to, but really for warrants it's usually now reasonable grounds.

Mr Kormos: So it's an archaic phrasing?

Mr Bromm: It's an older phrase.

Mr Kormos: That betrays someone whose legal training is older than other people's.

Mr Bromm: Or someone who watches TV, and that's where you always hear those phrases. But really now "reasonable grounds" is a recognized phrase for the validity of a warrant.

Mr Kormos: At the end of the day, this really has nothing to do with people under 16, does it?

Mr Bromm: It could cover someone who's under the age of 16, but not necessarily. Those children could still be dealt with under the Child and Family Services Act.

Mr Kormos: Is there anything in section 1 that expands from what an intervention could consist of under the Child and Family Services Act?

Mr Tilson: It only applies to people under 16.

Mr Kormos: Yes, but I'm asking is there anything in section 1 in terms of the definition of activities that could prompt, we'll call it, an intervention?

Mr Bromm: The main difference is that the Child and Family Services Act sets out situations in which a child

can be deemed to be in need of protection. It does mention sexual abuse, but there is no specific mention of any of these enumerated activities. So what this section does is make clear the scope of the activities that will be covered by these protective provisions. The Child and Family Services Act is not as clear. There's only one reference to sexual abuse and exploitation in that section, without a definition as to what types of activities might be contemplated by that section. The reason there, of course, is that the Child and Family Services Act was originally structured to protect children from abusive parents in abusive parental situations, and this really goes beyond the scope of that type of legislation.

Mr Kormos: I want to make sure, because I put this to Mr Bartolucci, in view of clause 1(3)(a), the "attempting to engage in"—maybe I should wait till the amendment is dealt with, but do you see, even if the amendment passes, it being all nullified by clause 1(2)(a)?

Mr Bartolucci: No, I see them as two different things, Peter.

The Chair: Is there any further discussion on section 1?

Mr Tilson: You've probably guessed by now that the government is not in favour of the amendment. I won't add to what Mr Bromm has said, other than it does limit the scope of the act. I would quite frankly agree with Mr Kormos: if you did take out the words "or will engage in" I believe it would contradict clause 1(3)(a). However, we can deal with that again.

I think the main rationale is that just because a child has not yet engaged in dangerous activity doesn't necessarily mean that he or she isn't in need of protection. Therefore, as has been said by other speakers, this amendment would limit the scope of the act and accordingly the government will be opposing this motion.

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The Chair: Any further discussion? I'll ask the committee, are you ready to vote?

Mr Bartolucci: Chair, a recorded vote.

The Chair: We're voting on the Liberal motion to section 1, found on page 1.

Ayes

Bartolucci, Bryant, Kormos.

Nays

Beaubien, DeFaria, Dunlop, Tilson.

The Chair: I declare that motion lost.

Mr Kormos: We're going to debate the section now, aren't we?

The Chair: Yes. If the members are not ready to vote on section 1, I would entertain comments on section 1.

Mr Kormos: I want to go to the issue of subsection (3) and the attempt provision. Obviously that relates only to clause 1(2)(a), "including ... engaging in prostitution ... attempting to engage in prostitution...." I would ask the parliamentary assistant why there wasn't similar attempt considerations of the other four enumerated activities. Let me put this to you. Again, I appreciate Mr Bartolucci's bill in narrowing the scope of the grounds or making them clearer, but you have "attempting to engage in prostitution" but you don't have "attempting to provide escort services." They don't deal with the definition of "child," obviously, and that's going to be something about which I have great concern. But a person who is advertising themselves as available for escort is not providing escort services, arguably, although I'm sure some crafty lawyer would try to say the mere fact of advertising, holding oneself out as an escort, is providing escort services. The counter-argument is going to be no, it was only an attempt to provide an escort service. I suppose, similarly, if a young person answers an ad to be a model, whatever guises are used to enlist people in these businesses, the fact that they were applying for the position or presenting photographs of themselves, or doing whatever they had to do to be contemplated for being listed on somebody's register, would again be "attempting." Similarly, for sexually explicit pornographic images, if a person who is contemplated as being the subject matter of this act is in a porno studio but has not yet been filmed, the act would then presumably not incorporate them.

Why I say this is all relevant is because you have a non-illegal activity—although, of itself, I am acknowledging for children under 16, or for any person, an activity that many people, especially in view of the circumstances, would deplore, prostitution being considered an activity which gives rise to a presumption of sexual exploitation or at risk of sexual exploitation, and then you clarify it by "attempting to engage in prostitution," which presumably means the very same thing as was contemplated by Mr Bartolucci's amendment. In other words, if I'm a young person contemplated by this act and on the wrong corner of a downtown city street, standing there, waiting for the bus that never comes, that seems to me to be getting pretty close to "attempting to engage in prostitution," because it's not attempting to engage in a sex act—do you understand what I'm saying?—it's not a scenario where, for instance, the deal has been made and the police interrupt it before you get down to the exchange of favours, if you will, itself. But "attempting to engage in prostitution" seems to me to contemplate literally standing on a street corner. I put that in a very crude way. I wonder if Mr Bromm would address that, and if I'm wrong, just say so.

Mr Bromm: I think the main point about subsections (2) and (3) is that they've been designed for different purposes. Subsection (2) sets out the circumstances in which a child could be found to be sexually exploited, and that's why they're enumerated in that way. It covers off both past activity and possible future activity, which would include, by definition of future activity, any attempt.

Subsection (3) is a deeming provision. It's not a definition provision. What it's meant to do is to just provide

guidance to the court, to say that in certain circumstances when you prove these activities, you don't need to go any further to prove that it's sexual exploitation or that there were past activities or future activities. Once you prove that a child was attempting to engage in prostitution or was in a common bawdy house, that's all you need to show that that child has been sexually exploited. That's really all subsection (3) says.

The reason why subsection (3) doesn't enumerate the other activities is because it is broadening the scope of what people generally understand to be regular prostitution activities—standing on the corner, as you refer to it. Because of that it's likely that before the court is going to contemplate removing someone's liberty, they're going to want evidence of exactly what that person was doing. Therefore the government did not want to include those activities in the deeming provision, because they really cover long-standing and historical activity that everyone agrees is sexual exploitation. It's not defining the conduct that is covered by the legislation, it's simply saying that once the police officer or child protection worker shows A or B, that's all they need to show in order to prove that there were purposes to remove the child from that situation.

Mr Kormos: So you have no appreciation of my concern about subsection (3) not paralleling subsection (2)?

Mr Bromm: No, because they're for different purposes. From my perspective, the subsections work together as opposed to having any conflict.

Mr Kormos: I don't want to prolong this, but clause 1(2)(a) says "engaging in prostitution," clause 1(3)(a) says "attempting to engage in prostitution," and clause 1(2)(b) says "engaging in any sexually explicit activity in an adult entertainment facility"—a strip club—"or in a massage parlour." But you don't have "attempting to engage" in an activity in a strip club or a massage parlour. That's where my concern is.

Mr Bromm: That difference would be covered off, because in those situations the child would be in a specific facility. Therefore, the fact that the child is in a specific facility would need to be coupled with what that child was actually doing. It's more the location of the child than their activities and so it doesn't need to be covered by an "attempting" provision. What the "attempting" is trying to do in clause 1(3)(a) is to say that if you have evidence that a child is attempting to engage in prostitution—and usually that's going to come either from the police conducting an undercover operation in which they're posing as a john, to use the language—if they actually have evidence, "Yes, that's what that child was attempting to do," that's all the court is going to need to hear, as opposed to having to show, under subsection (2), that the child was likely to engage in prostitution, for which you'll need a lot more evidence, because you don't have the specific evidence of an undercover cop saying, "I spoke to the child. She or he offered services for a certain amount of money." That's all they need to know. If that hasn't taken place, the court is going to want more evidence of why you think that child was attempting to engage in prostitution if they didn't actually make an offer.

Mr Kormos: Except that what's happened there is that a Criminal Code offence has taken place.

Mr Bromm: Right.

Mr Kormos: Once again, soliciting, which could be perceived in the colloquial as "attempting to engage in prostitution," is an offence. That's what the offence is, for all intents and purposes, for the purpose of prosecuting people and bringing them before the courts.

I hear you and I'm listening very carefully. In terms of, let's say, even clause 1(2)(e)—and I'm not going to generate the debate over Maplethorpe here and now, but you know what I'm getting to. Let's abandon Maplethorpe and let's talk about Sally Mann, for instance. You might be familiar with the approach of Customs to her very legitimate, mainstream photography of mostly her own kids. You've got "for the financial or other gain of the child or another person." "Other gain"—however much we may find the selling of young people—and let's say the notorious Calvin Klein, amongst others, in terms of how young people are portrayed on billboards and magazine spreads—the fact is, for better or worse, again, that is perceived as legitimate activity. But when I look at "sexually explicit or pornographic," clearly then the courts are saying, "You put in 'or.' It's clearly an exegetical 'or' here, not a conjunctive 'or,' so it means two different things." So does a Sally Mann photo, then, and the young people who might pose in a Sally Mann photo, constitute a "sexually explicit" image? Clearly not pornographic; that's a given, that's an assumption. Does a young person in a Calvin Klein type of ad constitute "sexually explicit"? Yes, I think so. I've seen the glossy magazines, seen the large billboards. I'd say they're pretty sexually explicit. Is that really what's being contemplated here?

1630

Mr Bromm: No, and I think that's actually the main point, that the sexual exploitation definitions and provisions have to be looked at in the context in which they'll be used. I think the definitions were meant to be broad to protect as many children as could be and would be in need of protection under those provisions. The definitions may inadvertently be able to be applied to a wide range of circumstances that are not contemplated by the act, but it's necessary to have the broad definitions to provide a broad range of protection. With the safeguards of the police and the child protection workers knowing the context in which they will use the definitions, and the context of having courts subsequently review the apprehension, we would be able to exclude the inappropriate use of those provisions.

Mr Kormos: Help me with the Child and Family Services Act. The "child in need of protection" is defined in a very broad sort of way, isn't it?

Mr Bromm: Yes. There are, I think, 10 different paragraphs that define the situations in which a child may

be in need of protection, only one of them dealing with exploitation or abuse of a sexual nature.

Mr Kormos: Yes. But you agree with me that every one of the items enumerated here would be logically contained within that one definition in the Child and Family Services Act.

Mr Bromm: Not necessarily, because that act uses the terms "sexual exploitation" and "abuse," but in the context of the abuse and exploitation happening at the hands of a parent or someone in "care and control of the child." These contemplate a much broader range of individuals who might be exploiting the child.

Mr Kormos: In the hands of a parent or someone with care and control of the child.

Mr Bromm: I can actually find the provision, if you want.

Mr Kormos: Please, because I think that's important.

Mr Bromm: This in subsection 37(2) of the act. I'm just trying to find the exact provision: "the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility." So it's very limited, that it's either in the hands of the parent or it's in the hands of another individual but the parent knows it's taking place.

Mr Kormos: All right. So you mean to say that a runaway 14-year-old who's working the streets as a prostitute cannot be regarded as a child in need of protection because there's no suggestion that her parents are either condoning it or promoting it or even aware of it?

Mr Bromm: No. I think there are situations where that child would be covered, and the courts have given a very liberal interpretation to this provision. But the more you press the boundaries, obviously, of the provision by including situations which wouldn't have been contemplated at the time this act was drafted, you do increase the likelihood that the court is going to say, "I'm not so sure this is covered." But I think the weakness of the Child and Family Services Act in this situation isn't limited only to how it defines "sexual exploitation"; it's also linked to how you are able to treat a child who is apprehended under that statute. I'm sure you'll get to that particular limitation later.

Mr Kormos: I've had some significant interest in that and did make reference to the Child and Family Services Act during second reading debate.

Mr Bromm: I think the main point is that this definition was intended to be as broad and clear as possible to avoid there ever being litigation in the court about what's included and what isn't in terms of "sexual exploitation," which is a possibility with a more vague definition.

Mr Kormos: OK.

Mr Tilson: I think we're finished section 1, Mr Chairman.

The Chair: Are we finished discussion on section 1?

Are the members ready to vote on section 1?

All those in favour? And those opposed? I declare section 1 carried.

Section 2: I see no amendments.

Mr Kormos: Here's where we get into an area that's of great concern, because what this does of course is define "child" as "an individual who is under 18 years of age," whereas the Child and Family Services Act would define a child as someone who is under 16 years of age. And the scope of the mandate of child protective services is restricted to that but for the cases of children who are wards or quasi-wards before they reach the age of 16, where that wardship or quasi-wardship can be extended beyond that. I'll leave it at that to avoid displaying less than total familiarity with that act.

What's the status of a 16-year-old at common law in Canada right now in terms of their ability, their capacity, to abandon their parents, if you will, in terms of parental control, make decisions for themselves etc?

Mr Bromm: A child over the age of 16 does have a right to live independently of his or her parents, but of course the right would be subject to some controls; for example, in Alberta's case—they would have the same legislation if this legislation is passed—they recognize a child as being up to 18. And so even though there would be the general idea that someone over the age of 16 could live independently, that act recognizes that at certain times the right to live independently is subject to some limits where the child is endangering himself or herself. This would be one of those situations.

Mr Kormos: What's the origin of the age of 16? Because I understand that across Canada, different provinces had different ages for, for instance, their historic training schools acts and so on. They had the Juvenile Delinquents Act, which imposed a standard, but there was some interrelationship between respective provincial jurisdictions and the determination of ages for the purpose of training schools acts. Am I correct so far?

Mr Bromm: Yes.

Mr Kormos: What's the origin of 16?

Mr Bromm: I'm sorry, I can't tell you what the origin is other than to tell you that it's been the long-standing definition within the Child and Family Services Act, that its point for child protection purposes is 16 years or under.

Mr Kormos: OK. Fair enough. Maybe you don't know why, but was there any consideration of an amendment to the Child and Family Services Act concurrent with this bill that would amend the Child and Family Services Act so that you would have parallels in the definition of "child"?

Mr Bromm: I can't really answer that, other than to say that the government's intention in having separate legislation would be similar to what they did in Alberta, and that was to have legislation that focused specifically on the needs of this particular population and to not look at the policy of child protection over the age of 16 in general. I can only respond to the intention to have specific legislation for this population, but I can't say about other deliberations for other choices they might have had.

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Mr Kormos: As I understand your explanation of section 1 and now the brief comments on section 2, this

is a completely different regime than the Child and Family Services Act.

Mr Bromm: Yes.

Mr Kormos: Therefore it wasn't a matter of amending or contemplation of amending the Child and Family Services Act with, let's say, the five activities contained in—although it's not an exhaustive list—section 1? It wasn't a matter of amending the Child and Family Services Act to deal with that, but a goal of creating stand-alone legislation?

Mr Bromm: And also to recognize that in order to do what they wanted to do in this legislation in the Child and Family Services Act, it would have required a substantial overhaul of that legislation because there are provisions in that legislation which actually prohibit safe facilities from doing what is contemplated by this act. So, for example, in the child protection provisions of the Child and Family Services Act, you are not allowed to involuntarily detain a child. If you remove a child and you take them to a safe facility, that facility is not able to keep that child against his or her will.

We heard from police and child protection workers that often when they pick up children who are involved in these activities, they take them to Moberly House or Covenant House, to use the Toronto example. Those children are out the door the moment the police leave and there's nothing those facilities can do to stop those children from running away. That's because the Child and Family Services Act was created to address a different child population than this population that is a very heavy flight risk, where the other children are not deemed to be as heavy a flight risk. The only way you could involuntarily detain a child under that statute is under the provisions that deal with particular mental incapacity and danger to themselves or to the public in very specific circumstances. So it would have required an overhaul of that statute beyond simply redefining age and redefining specific activity.

Mr Kormos: What you really mean is that with a person under 16 in the custody or in the care and control of family and children's services, family and children's services have no more or no less powers than a parent does, for instance, to keep that child at home?

Mr Bromm: Subject to the order of the court placing the child somewhere else, when they pick up a child under that act they really cannot involuntarily detain the child. They can take steps. They can take their clothes and their shoes, as they often do, and give them pyjamas and try to keep them from running. But we know from the police that with this particular population—middle of February, no matter how cold it is, paper slippers—they're out the window.

Mr Kormos: So in contrast to the existing legislation, this law is designed to lock these people up, if need be?

Mr Bromm: What it's designed to do is allow you to hold the child. So, yes, you can lock them up if it's necessary.

Mr Kormos: To hold them involuntarily.

Mr Bromm: Yes, as long as a court has reviewed it and said that's necessary. The legislation doesn't require involuntary detention but it permits it if it's appropriate.

Mr Kormos: So this is a radical change in the law because you're telling me that this is dramatically different from the Child and Family Services Act in that this bill allows the involuntary detention of the people being contemplated by the bill?

Mr Bromm: Yes, if the conditions set out in the bill are met, it would allow a child to be held against their will.

Mr Kormos: Without that child having been charged with the commission at any crime.

Mr Bromm: No, because it's not criminal legislation. It's for child protection purposes.

Mr Kormos: Right.

Mr Bromm: I can only use the example in Alberta, of course, because they're the only other jurisdiction that has specific legislation. The courts there have said it's appropriate legislation and that involuntary detention in that circumstance is also appropriate.

Mr Kormos: I want to ask now about the 18 years of age once again. What happened? What's the difference between 16 and 18 in terms of how this legislation is drafted as compared to, let's say, 19?

Mr Bromm: The only response I can give to that is to know that in drafting it the government looked to Alberta, which is the only jurisdiction that has similar legislation, as I've mentioned. Also, in speaking with the police and children's aid societies and saying, "How should 'child' be defined?" they were very clear that they thought the definition should be 18 and under. When you get into 19 and the early 20s the consideration was that you are entering adulthood at that phase and this legislation is really meant to cover a different population.

Mr Kormos: Because you know that there are some people who argue that it was entirely inappropriate for the federal government, with its Young Offenders Act, to put 16- and 17-year-olds into a youth regime. You're familiar with those arguments, right?

Mr Bromm: Yes.

Mr Kormos: Some political leaders are very vocal about that, some of the concerns about 16- and 17-year-olds being treated as young persons along with 12-, 13-, 14- and 15-year-olds. Some of the people who find that highly objectionable, as I understand it, have been at least one or two Attorneys General of this government, unless I've misread their comments. Am I being unfair in that regard?

Mr Bromm: No, but I think in that circumstance the government has recognized that there's a difference between a 16- and 17-year-old who is committing a very serious criminal offence, a violent offence, for example, versus a 16- and 17-year-old who is being sexually exploited. The latter example is a child in need of protection, not a child who should be treated as a young offender under the Criminal Code or the Young Offenders Act.

Mr Kormos: I'm sorry—again, you're here as a civil servant—but I just find it a little schizophrenic, Chair, that on the one hand this very same government argues that 16- and 17-year-olds, for the purpose of the application of the law, shouldn't be treated as children—and it appears that successive Attorneys General have advocated for the removal of 16- and 17-year-olds de facto from the regime of the Young Offenders Act into the historical world of the adult Criminal Code—yet here they're saying that 16- and 17-year-olds basically should join the population of young people who are contemplated as capable of being children in need of protection, to wit, under the Child and Family Services Act. I just find that peculiar.

Mr Tilson: Don't worry, Mr Kormos. The Senate today, as I understand it, is suggesting an amendment to the Criminal Youth Justice Act to put it back to the way it was with the Young Offenders Act.

Mr Kormos: Before the Young Offenders Act?

Mr Tilson: No, no, to the Young Offenders Act, which makes it even stranger.

Mr Kormos: I'm sure it does. I'm old enough to remember the Young Offenders Act when it was first implemented.

Mr Bryant: I would advise you, as counsel, not to comment any further.

Mr Kormos: It wasn't all as straightforward as it looked. There was checkerboarding across the country, wasn't there, in terms of how young people were treated, be it the age of 16 or the age of 18? In fact, some jurisdictions made a distinction between whether you were a young man or a young woman in terms of how you were treated by the respective youth criminal justice system or the adult justice system. Isn't that correct?

Mr Bromm: I can't comment because I don't have experience in the criminal law or how young offenders were treated.

Mr Kormos: A long time ago.

Mr Bromm: Or even yesterday.

Mr Kormos: Mr Tilson would know a long time ago.

I am very troubled, and will speak further as we get further into the bill, in terms of the types of things that can be imposed upon a person being dealt with by this act. I'm very troubled about the adoption of the age of 18. I hear what's being said, but then one could say, "Why not 19, why not 20, why not 21?" We live in a myriad of thresholds in terms of age. One of them is clearly the age of 12 in terms of the age at which criminal or quasi-criminal culpability can be assigned, because prior to that there's no capacity for there to be an assignment of criminal or quasi-criminal culpability, and some people have wondered about that. They say that if an 11-year-old does something that is as horrendous as what a 14-year-old—I mean, people have expressed frustration about not being able to treat 11-year-olds as if they were 12-year-olds. Similarly, 16 is clearly historical and I understand that's primarily a common law age. Similarly, 18 and 19 have been imposed legislatively, in part through training schools acts of different provinces—not this one—but then by the imposition of, for instance, the age of consent for a number of activities. Then the age of 21 has historically been regarded as some sort of point of right of passage. Probably that was only because you could drink at the age of 21.

Mr Marcel Beaubien (Lambton-Kent-Middlesex): What are you suggesting?

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Mr Kormos: I'm just troubled that the thrust of the explanation seems to be we copied the Alberta legislation. I'm concerned that the Alberta history in terms of, for instance, their parallel of the training schools act—their legislation reflects their history as distinct from this legislation necessarily reflecting Ontario's history. I think it's certainly of interest.

Mr Bromm: I would just like to clarify that, and perhaps you misunderstood. When they drafted the provision and chose 18, they looked to Alberta but they also based it on their discussions with police and child protection workers and the front-line service providers, like Moberly House and Covenant House, in terms of choosing an age. So I would have to say that it's not accurate to say that they simply copied Alberta's legislation in that regard.

Mr Kormos: OK. If I may then move on from that, two issues: safe facility and society. First, in dealing with society, the children's aid society, family and children's services, or any other number of names that it can be identified by, has accepted the mandate provided for them in this legislation?

Mr Bromm: Yes, the government consulted with them during the development of the legislation and after it was introduced.

Mr Kormos: And "safe facility," that's something that's troubling because it's something that's down the road; it's going to be done by designation. Is there any design, any model, for what constitutes a safe facility?

Mr Bromm: All I can say is that the Ministry of Community and Social Services, as the ministry responsible for children's aid societies, is in the process now of developing a framework for the safe facilities. The intention is that if the legislation is passed, then they will put out a request for proposal that will have that framework in it, set out the services that are contemplated under the act and the requirements, and then facilities will be able to apply through that RFP process. Usually, they will be facilities that are already recognized under the Child and Family Services Act that will be able to provide the additional services contemplated by this act.

Mr Kormos: But you tell us that family and children's services doesn't currently have the power to involuntarily detain somebody.

Mr Bromm: Yes, but it would be provided to them through this legislation.

Mr Kormos: Right. Is there any assurance that a young offender facility will not be used as a safe facility?

Mr Bromm: This act doesn't talk about who would be used and who wouldn't be used in terms of a safe

facility. The only thing I can say is that my understanding is safe facilities will be separate from young offender facilities as a necessary step to ensuring that this is recognized as child protection legislation, not as young offender legislation.

Mr Kormos: I understand that, but that would be the same way that young offender facilities are currently segregated and isolated from adult facilities where they are occupied on the same grounds.

Mr Bromm: That's beyond what I can comment on.

Mr Kormos: You're talking about the need for, I trust, a wide range of types of facilities, but it includes, among other things, facilities where a person can be involuntarily detained. Right?

Mr Bromm: Yes. There's a provision in the legislation that says that a child can be kept in a locked facility or a locked area of the facility if it's appropriate. So those safe facilities will have to have the means to have a child involuntarily detained, probably by either having a room that can be locked from the outside or having a separate section of the building that might be able to house more than one child, for example, that can be locked from the outside.

Mr Kormos: Not much work has been done on the safe facility issue yet, at least any work that's reflected in the bill.

Mr Bromm: The bill doesn't set out the framework, but the Ministry of Community and Social Services has been working on what that framework would look like and they've had a substantial amount of time because, as you know, the bill had been previously introduced, did not proceed, and then was reintroduced. So I would say they're substantially far along in terms of developing what that framework would be.

Mr Kormos: You see, my problem is that the Young Offenders Act historically has always attempted to provide a sense of comfort about young offenders not being in the same facility, the same lock-up, as adults. But in practice it has more often than not been either illusory or mere lip service. That is to say, in police stations, police lock-ups, for instance, yes, young offenders aren't kept with adult offenders who are being held in custody prior to an appearance, let's say, before a justice. But effectively what that means is that there's one six-inch block wall between the young offender being kept in cell A and the adult being kept in cell B. The young offender hears, experiences and enters the ambience, the environment, of an adult detention centre very, very rapidly. Similarly, in detention centres there's been the same artificial division. It's been a whole process of building a door here and making sure young offenders come in the back door, whereas adult prisoners come in the front door. I'm very concerned.

The fact is, the Young Offenders Act at least tried in its own legislation, in its own body—it was unsuccessful—to ensure that young offenders aren't kept in the same facilities as adults. That's been interpreted very liberally, I suppose, in terms of what that isolation consists of that's separate. I'm concerned that in this bill there's no guarantee that a safe facility will not include or cannot be located in a young offender facility, especially in the context of the privatization of young offender facilities and the eagerness with which I contemplate that operators of young offender facilities from the private sector will have to say, "Oh, we will provide involuntary detention areas for so-called children apprehended under this legislation."

That bothers me a great deal because that means that these people, again, notwithstanding the best efforts—and I understand the very careful use of language on your part; I understand it and I commend you for it—that this is not to be criminal or quasi-criminal legislation. It's legislation that has the capacity to lock young people up, has the capacity without there being any charges laid or even any crime committed without charges being laid and, similarly, I submit to you, has the capacity to literally lock these young people up in what is de facto a young offender facility.

I find that extremely troublesome and I submit that's a concern because it's mere designation. There's no definition, there's no qualification. It's a premises designated by the minister. It means there's no qualification, and the very careful but nonetheless thorough description by Mr Bromm of the clear capacity and intent of this legislation to effect involuntary detention leads me to that. I wanted to express those concerns and indicate my opposition to the definitions in section 2.

The Chair: We've been discussing section 2. Is there any further discussion?

Mr Tilson: We're ready to vote on section 2, Mr Chairman.

The Chair: Are members ready to vote?

With respect to section 2, all those in favour? And those opposed? I declare section 2 carried.

If we could turn to section 3, I would ask if there are any questions or comments on section 3.

Mr Kormos: This definition in terms of "court" seems to include what we in small towns—maybe you do too—colloquially refer to as provincial court, family division, what I understand is now called the Ontario Court of Justice. I hearken back, Parliamentary Assistant, to Bill 117. You'll recall it was mentioned in the House last week and put to your Attorney General in a question from Ms Churley. You'll recall the debate around Bill 117 and the capacity of the system to deal with Bill 117 applications: whether there were going to be enough JPs, whether there were going to be enough advocates etc.

I've been in numerous family courts from time to time over the course of many years now; I'm talking about what we call the old provincial court, family division. Family court judges, I appreciate, are blended now with so-called criminal judges. These judges, these courtrooms, are stacked up, backed up, out into the hallways and on to the streets. We're witnessing sausage-factory justice, and judges, clerks and the whole nine yards working very hard.

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One of the more frequent—not the most frequent—types of complaints in my constituency office is people

who are in the provincial court, family division system, just regular folks trying to get a child support order or a custody order or an access agreement, who show up at the family court at 9 in the morning, endure a list that's three arms long and have to sit, not beside each other—talk about estranged spouses—but in close proximity to each other, and then at 4:30 are told very apologetically by a judge, "Everybody else is adjourned two weeks hence and we'll try one more time."

Where and how are our courts going to be able to accommodate what could conceivably be a considerable new load of considerations? I'm talking about the traditional, historical family court system. I hope you agree with me that these courts are backed up and the staff and judges are working extremely hard. Where is the capacity going to be found? For instance, are there going to be judges designated to deal with applications under this bill? Are there going to be courts that are designated?

One of the regrets a whole lot of people had about the blending of the criminal judge with the family judge was the prospect of a judge losing expertise or at least losing the cultural sensitivities that family court judges acquire that were distinct from criminal judges. Are special courts or special judges contemplated to deal with these applications? Surely the province wouldn't be embarking on this endeavour if it wasn't contemplated that a significant number of young people were going to be apprehended under the bill.

Mr Tilson: I'll have to let Mr Bromm respond to the question as to courts and processes, although I don't think the bill is designed to deal with assisting children specifically or completely with the court system. There may be other areas in which this legislation will hopefully help children.

I can only refer to a statement made by Mr Baird, in his capacity as Minister of Community and Social Services, back in June when this legislation was brought forward. I have a press release before me which I think is in the package we all have. It's under tab B3. The press release dated June 21, 2001, states, "'We are committed to ensuring that sexually exploited youth get the help they need to start a new life,' said Community and Social Services Minister John Baird. 'Our government will spend up to $15 million annually on the services and support required by these children.'" That's an indication as to what the government is prepared to do as far as providing funding.

The question as to new courts and specialized areas, I don't know that answer. Whether Mr Bromm can enlighten the committee on that, I don't know.

Mr Bromm: The only thing I can confirm is that in choosing this court level that it would go to, we ensured that we consulted with our court services division, and we had legislative counsel to rely on in ensuring that we were referring these matters to the appropriate level of court. In terms of the other issues you brought up, I'm not really in a position to comment on those.

Mr Kormos: Have you reflected on them?

Mr Bromm: We have been working with our court services division—

Mr Tilson: Mr Kormos, you can't ask us how we're thinking, surely.

Mr Kormos: I didn't ask him what he was thinking, I just asked whether or not he had been thinking about it.

Mr Tilson: Mr Chairman, surely that's not an appropriate question. You can ask me what I'm thinking, but I don't know whether you can ask him.

Mr Kormos: I know what you're thinking. I can read you like a book. Mr Bromm is a little more complex.

I've indicated my concerns about that as it applies to section 3. I should determine, though, where the justice of the peace and the judge—the justice of the peace has a preliminary role and the judge has a determinative role?

Mr Bromm: Yes. The role of the justice of the peace would be only with respect to the initial show-cause hearing. The subsequent and full hearing that determines the full period of a child's intervention has to be done before a judge.

Mr Kormos: Further to that, you understand that most family courts—what we call family courts down where I come from—don't have justices of the peace sitting in them. The JPs are sitting in bail court. I know you've got old city hall here and College Park and courtrooms all over the city, but down in Welland, for instance, we've got the one courthouse. There's a JP who comes in at 9 in the morning and hears adjournments until 10 or so, and then the judge comes in. Then there's another JP who will conduct bail hearings. Once again, those JPs are dealing with court lists, and you might have recognized one or two of them speaking out publicly with respect to those lists, for instance, here in Toronto. The JPs are conducting bail hearings late into the evenings. Some of them are sitting and causing the their staffs to sit 10-, 11-, 12-hour days.

You agree with me that this is a highly sensitive bit of work that JPs and everybody else involved in the application of this act are being called upon to do, isn't it?

Mr Bromm: Yes.

Mr Kormos: And it requires special care and attention, because you're talking about safeguarding the well-being of the child, as defined, in the course of doing this, right?

Mr Bromm: Yes.

Mr Kormos: Where does the child go who is considered a flight risk when they're brought into court down in Welland, for instance, or in St Catharines? If they're considered a flight risk, what happens to them while they're waiting for their appearance before the JP? Do they get locked up in the holding cells?

Mr Bromm: I'm not in a position to comment on what will happen in specific locations other than knowing that that's an issue the Ministry of Community and Social Services has to look at, with the children's aid societies and the safe facilities, in terms of how the court process will actually work.

Mr Kormos: They get put into the bullpen along with other young people?

Mr Tilson: You're probably returning to your question on safe facilities, Mr Kormos. Obviously that is being developed by the Ministry of Community and Social Services.

Mr Kormos: With respect, sir, I've been in many a holding cell and bullpen over the course of many years across this province, and other people have too. They are not nice places, and nobody is suggesting that perhaps they should be nice places. In view of the courthouses across the province, some of them relatively new, some of them antiquated beyond anybody's imagination, I'm just contemplating the sort of facilities that are in those places for a person who may be considered somebody at risk of flight and the types of environments that are there to be utilized to effect a secure custody of them until they appear before a JP.

I'm also contemplating people having to sit and wait, because I know other people are doing it. In fact, people charged and being held in jails are waiting days for their bail hearings. They are making their first appearance before a justice, hopefully, in the appropriate period of time. I'm just extremely concerned about the capacity of the facilities. Again, the supervisory role of a justice and then of a judge, how can I argue against that? Other elements of the bill, I can.

But I'm extremely concerned about the regime you're creating here. You insist that these young people have committed no crime, yet I'm telling you, sir, that my experience, my familiarity with the system—and I could be wrong; I could be very wrong—is that these young people who you say have committed no crime, and indeed they haven't, who are not charged with any offence, and indeed they won't appear to have been charged with an offence, will be processed in a manner so akin to that of a person who is arrested, charged and detained pending a release hearing that you won't be able to distinguish them from the full-fledged criminal, or the full-fledged accused, at least, walking in with a list of Criminal Code offences. That's my concern. I believe the model that's being proposed here, in the context that we're talking about it, without creating a complementary model for dealing with them in the system effectively criminalizes them; perhaps not for the purpose of charging them but for the purpose of treating them. I leave it at that.

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The Chair: We've been debating section 3. Are members ready to vote? All those in favour of section 3? Those opposed? I declare section 3 carried.

With respect to section 4, we have a government amendment.

Mr Tilson: In subsection 4(6) there was a drafting error. Accordingly I would move that the English version of subsection 4(6) of the bill be amended by striking out "judge" and substituting "justice." The word "justice" is used throughout the rest of the bill and this amendment would make subsection 4(6) consistent with the rest of the bill, the rest of the act.

The Chair: Any further comments on this government motion?

Mr Bryant: Just a question. While we're cleaning it up, is there any corresponding change that needs to be made to the French version?

Mr Tilson: I don't believe so, Mr Bryant.

The Chair: Mr Kormos?

Mr Kormos: As I understand it, it is, in effect, almost correcting what could be a typographical error, to create the consistency.

Mr Tilson: That's right.

The Chair: We have a government motion on page 2 to amend section 4. Are we ready to vote? All those in favour of this amendment? Any opposed? I declare this amendment passed.

Is there any debate on section 4 itself?

Mr Kormos: Appreciating that the wording is used in section 1, but "at risk of" as compared to, de facto, "sexually exploited"—and it does go back to section 1. Again, the list there is not exhaustive, it's illustrative, but "at risk of"—I understand the deeming, for instance, in the latter part of section 1, the way you explained that to me, but "at risk of" seems to go to what Mr Bartolucci's amendment was purporting to. Is "at risk of," being undefined, purposely as vague and broad as it sounds to me?

Mr Bromm: The wording—

Mr Kormos: Perhaps we should let Mr Tilson first.

Mr Tilson: No.

Mr Bromm: The wording of section 4 reflects the wording in section 1 in terms of saying the child has been sexually exploited or is at risk. So, again, it covers both the fact that certain conduct has taken place or there are reasonable grounds to believe that certain conduct will take place in the future. That's what the "at risk of" is meant to cover, and again just to cover those situations where you would otherwise have to wait for the exploitation to take place before you can remove the child from the situation, it being considered not appropriate to have to wait for that to happen. But in terms of defining "at risk," that will be something the courts will have to do in terms of their show-cause and subsequent hearing in setting out whether or not the circumstances contemplated by the act are—

Mr Kormos: I'm not aware of any section of the bill that assists the court in determining what "at risk of" means.

Mr Bromm: I think it was a provision that was considered to be something the court would not need guidance on.

Mr Kormos: I find it an incredibly broad concept, don't you?

Mr Bromm: For these purposes, I think it's necessarily a broad concept.

Mr Kormos: Yes. So you and I are in agreement. It's an incredibly broad concept, with nothing in the bill to assist a court. Is there a parallel, other than in Alberta? That doesn't come from the Child and Family Services Act, does it?

Mr Bromm: The Child and Family Services Act recognizes the notion of there being risk as well. Again,

activity does not have to have taken place before protection can occur.

Mr Kormos: But it does that within the context of a child's family home or their actual setting.

Mr Bromm: In that environment, yes, but risk is recognized. And there isn't a definition, for example, in that act of what risk actually means.

Mr Kormos: I put to you that it could be argued that a kid who left small-town or big-town Ontario, came to Toronto and ended up homeless on the streets of downtown Toronto, with no source of income, was at risk of either the lure of the squeegee or the lure of the sex trade. That's not unreasonable, is it?

Mr Bromm: I guess we have different ideas of how the court would interpret the provision.

Mr Kormos: I don't understand. What if a homeless kid is hanging around with prostitutes? In your mind, does that start to enhance the "at risk of"? What if a homeless kid has had sexual experience as compared to having had no sexual experience? Would that create a higher or lower risk? I quite frankly don't know. What if a homeless kid came from a very strict, religious, moral background—not that religion is the sole source of morality, but for some people they are regarded as interconnected—a good Catholic boy or girl—and I can say that because my family background is Catholic—as compared to one whose family wasn't spiritual, what are you getting the "at risk" from? Are you getting "at risk" from the subjective observation of that person and who they are, their background, their environment, or their behaviour? That's my problem with "at risk of," because nowhere in the bill do we give a judge any assistance in determining what "at risk of" means.

Mr Bartolucci tried to address a concern with his amendment to section 1, but the "at risk of" provision seems to be—talk about holes you could drive a Mack truck through, blindfolded and in reverse. This seems to be one of those. Am I being unfair?

Mr Bromm: I think when the court looks at "at risk," and for the purposes of the rest of the act, it will be guided by the definition in section 1 that says what sexual exploitation is and includes mention of specific activities. I think risk will be interpreted by reference back to the likelihood or the evidence that those activities have taken place. That's why I think further guidance for the court isn't required in the bill, because it will be guided by the overall intent and purpose of the bill as set out in section 1, which is clear that it's not meant to just pick up a child who's on the street but a child who has engaged in or is likely to engage in enumerated activities.

Mr Kormos: You're talking about information being sworn. One of the problems with a bill like this is that we don't have the forms that are usually generated by regulation. So you're talking about, effectively, an arrest warrant under section 4.

Mr Bromm: It would be more in the nature of a warrant to pick up a child under the Child and Family Services Act.

Mr Kormos: But under this act.

Mr Bromm: Under this act, but they would look very similar.

Mr Kormos: You talk about the information of a warrant for—I'm paralleling it to arrest, maybe for my own motives or maybe just because it's more convenient for me to identify with that, but information for a warrant is a very brief document, isn't it?

Mr Bromm: I'm not familiar—the ones I've seen are very brief, but I haven't seen a wide range of them.

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Mr Kormos: The ones you've seen are pretty typical, because they're very brief; once again, reasonable and probable grounds, at least in the old days, to believe that Peter Kormos did commit the offence of—pick your list: a Criminal Code section, a provincial statute. Bingo, that's the information. That's pretty sparse information to intervene in this heavy-handed way, isn't it?

Mr Bromm: The only way I would respond to that is to say that the information that's contained in the warrant itself probably does not reflect the extent of the information that has been provided by the police officer or the child protection worker when they make application for the warrant. So the judge or justice is going to say, "What is your evidence for the warrant?" and they'll hear the evidence and issue the warrant. They may not necessarily repeat all of that evidence in the warrant itself.

Mr Kormos: This is entirely ex parte, isn't it?

Mr Bromm: Yes.

Mr Kormos: It's without notice to the person who risks being apprehended and detained, isn't it?

Mr Bromm: Yes.

Mr Kormos: In that respect, it's very similar to a criminal procedure, isn't it?

Mr Bromm: And, in that respect, similar to the procedure under the Child and Family Services Act.

Mr Kormos: But it's very similar to a criminal procedure.

Mr Bromm: That is why there is the hearing requirement within 24 hours of the child's apprehension, because it is contemplated that the nature of the intervention necessitates not stopping to give notice to the child.

Mr Kormos: You mentioned the Child and Family Services Act, and I'm inclined to agree, except for the fact that the Child and Family Services Act doesn't concern itself with children 16 and over.

Mr Bromm: Correct, unless they are the subject of a previous order.

Mr Kormos: That's right, and this bill does.

Mr Bromm: Yes.

Mr Kormos: Again, around activity performed by a person that is, in and of itself, legal.

Mr Bromm: The activity legal? Yes, but again, the legislation is not aimed at defining illegality per se, but situations in which protection is warranted.

Mr Kormos: I guess I'm just concerned about the similarities between this and criminal process when you persist, not incorrectly, in indicating that this isn't criminal law. It can't be, because it's provincial, right?

Mr Bromm: Exactly.

Mr Kormos: It would be impossible for this to be criminal law because it's provincial.

Mr Bromm: Exactly.

Mr Kormos: And if it is criminal law, it's ultra vires.

Mr Tilson: There you go.

Mr Kormos: Am I right on that?

Mr Bromm: Yes. Well, there's a risk it could be declared ultra vires. The court would have to be involved in that process. I wouldn't declare it so myself.

Mr Kormos: Just don't send the Attorney General himself to argue it. That's my only caveat.

Holy moly, we've got another notice of motion for a time allocation here on Bill 30. Oh, for Pete's sake. So now they're going to ram that through.

Mr Tilson: But we're talking about Bill 86.

Mr Kormos: Yes, I know. OK.

The Acting Chair (Mr Carl DeFaria): Is the committee ready to vote?

Mr Kormos: No. I'm addressing section 4. I'm very concerned about the parallels between this and criminal legislation and criminal procedure. I understand your explanation that it also has a similarity, a parallel in the Child and Family Services Act, but I say once again that the Child and Family Services Act, we agree, doesn't provide for involuntary detention.

Mr Bromm: But it does provide for removing someone from a situation involuntarily.

Mr Kormos: Yes.

Mr Bromm: What subsequently happens to them—

Mr Kormos: When they're a child in need of protection.

Mr Bromm: Yes.

Mr Kormos: But you've made it quite clear—and I was very impressed with your explanation of how the bill before us is very distinguishable from the Child and Family Services Act, because this bill provides for involuntary detention, which you said the Child and Family Services Act specifically does not.

Mr Bromm: Right.

Mr Kormos: I find the scales sort of tipping here, because when you combine that with a criminal-style process, with criminal-style consequences—I guess they're not consequences, unless being held in lock-up pending your release is a consequence—it causes me great concern.

Chair, you'll take a look at subsection (2). First of all, without the regulations, without the utilization of regulatory power to prescribe the type of evidence that is necessary, a justice merely needs an information sworn by the police officer or the worker. We're familiar, and Mr Bromm is familiar, with the types of informations that are sworn. These are based simply on the declaration that I swear that I have, I suppose in this case, reason to believe or reasonable belief that so-and-so is engaged in so-and-so. Bingo.

Other intrusive procedures like, for instance, a wiretap warrant, if I'm not misinterpreting—and, Mr Tilson, help me if I get this wrong; it's been many years. Because it is such a significant intrusion into privacy—it used to be section 176 of the Criminal Code; it's probably changed now, the wiretap provisions—a judge would require some pretty thorough evidence before issuing a wiretap. We're not talking about lock-ups here; we're just talking about listening in on their phone calls, because the person is suspected of committing a crime, usually a serious one: a conspiracy to traffic in drugs, a conspiracy to commit murder, organized crime activities, among other things.

It's of concern that if the regulations never happen or if they are as sparse as the section is, the legislation here permits that a mere information is going to be enough to put a young person—12, 13, 14, 15, 16, 17 years old; 17 years, 11 months and 20 days, right?—in a locked facility when that person hasn't committed a crime, and it can be done on a mere say-so. That should be of some concern. One would certainly hope that the legislation had provided for some standard of evidence to be provided.

Granted, perhaps it could be done by way of affidavit, as are most search warrant applications. They're done by way of affidavit. That affidavit is subsequently scrutinized by defence lawyers and crown attorneys to determine the validity of the wiretap or search warrant, because if there wasn't sufficient evidence to give the justice, the judge, jurisdiction to issue that search warrant, to issue that wiretap warrant, it's ruled inadmissible.

This is a pretty darned low standard of proof to subject a person to what, in effect, in many respects, amounts to the same treatment as would be accorded a person charged with a criminal offence. Mr Bromm is being very clear with us, as is Mr Tilson, that this bill does not criminalize any of the activities that are enlisted or contemplated by section 1. It says we're to trust the prospect of regulations "or on the basis of such other evidence as may be prescribed by the regulations."

I find that very disquieting. I would have expected that in the drafting of this bill, especially in view of the fact that the bill had existed in three previous incarnations, in terms of Mr Bartolucci's sponsorship of it, the government would have contemplated that. This is not investigative legislation in terms of testing the waters. The bill has been before committees at least once. I know Marion Boyd sat through the bill on committees. I wasn't there. I apologize, I wasn't dealing with the bill in its previous incarnations, but I am dealing with it now. I find it just incredible.

Mr Tilson: Mr Chairman, perhaps Mr Kormos should look at section 9, which talks about a show-cause hearing within 24 hours. I don't know whether that satisfies him or not; I expect it doesn't. It's not as if the police or children's aid workers are going out and simply picking kids up off the street. They have to have a hearing within 24 hours.

1730

Mr Kormos: That's exactly why I use the pre-release order stage of a criminal process. I understand that. That's what I'm asking about. I'm using the pre-release

stage where a person is held in custody. We've made it quite clear that this bill is all about involuntary detention.

The reason the bill is all about involuntary detention, as well as people 16 and 17 years old, is because the Child and Family Services Act isn't. Nobody's repealing the Child and Family Services Act or the capacity of workers, police or other authorities to pick up a kid as a "child in need of protection" under that legislation. This bill is all about involuntary detention and 16- and 17-year-olds.

Let's cut to the chase here. I am very concerned about the telephone warrant. We've canvassed. I'm not a fan of telephone warrants, but I understand that in remote jurisdictions, for instance, because of the shortage of justices of the peace—and the parliamentary assistant knows. I've referred often enough to travelling through communities like Peawanuck and Attawapiskat, amongst others, and communities that have one-person police forces and no JPs, communities that have police forces and no lockups. There's no place to detain people. I've talked to the police officers from native policing services in those communities and the difficulties they have without access to JPs. It is the lack of standard that's required to acquire what is in effect an arrest warrant—I'm sorry; you can call it by other names as much as you want, but that's what it is tantamount to—and an incredible intrusion because you're locking up the person who isn't charged or suspected of committing a crime.

This is what I want to emphasize, what I want to get back to and that, as we go on, we will see has little redress, in my view, in the event of a wrongful prosecution, because after all it is not a prosecution. A person has some redress at least in the instance where they're maliciously prosecuted. Again, I'm not suggesting that maliciousness should be the focus of our attention here, but I'm certainly suggesting overzealousness and an interest on the part of a community to clean up its streets.

Look, drive up Yonge Street, starting down around where Sam's is or even farther south. You'd have to be from Mars not to get a feeling about some of the stuff that's going on on Yonge Street as you drive up the strip there on your way to Bloor. Is this about cleaning up the street? If it is only about that, it doesn't deal with any of the problems that are behind the sometimes disturbing images we get on Yonge Street. I notice that peddling drugs, amongst other things, is not one of the items enumerated in section 1. I also notice that section 1 is so focused on sexual activities or sexually-related activities that a judge, in regarding that list as not exhaustive, is nonetheless going to conclude—and Dreiger on statutes knows the Latin for it. Do you know the Latin for it? Can you help me with that? Where you interpret what's being defined by the nature or tone of the list that's provided, notwithstanding that the list isn't exhaustive?

Mr Bromm: Expressio unius est exclusio alterius or something like that?

Mr Kormos: I think so. That's the problem. I have real concerns. I will not be supporting section 4 because of the lack of standards for obtaining a warrant for the apprehension of a person. I believe that when you're taking somebody into custody the standard for determining that should be very high, especially when that can be—and this is where it is different from the Child and Family Services Act—an involuntary detention, almost inevitably in a jail cell—that's what we are getting down to—and, unlike the criminal law, when you are not arguing that the person has committed a criminal offence and is ergo, de facto, dangerous to other people in the community. You keep saying, "No, we are not criminalizing this activity. We are not saying it is wrong. We are saying these people are victims." I oppose section 4 for those reasons.

The Chair: Is there any further discussion on section 4? Are the members ready to vote?

Mr Tilson: Section 4, as amended, Mr Chairman.

The Chair: Are the members ready to vote? All those in favour of section 4 with the amendment? And those opposed? I declare section 4, as amended, carried.

Section 5: I see no amendments. Is there any discussion with respect to section 5?

Mr Kormos: You've been very patient with all of us, Mr Bromm, but I suppose especially with me. Can you describe circumstances that were considered when section 5, apprehension without warrant, arrest without warrant—I think I know the circumstances under which you can arrest without warrant in the Criminal Code. What are you contemplating here? Give us perhaps one or two examples when you have this arrest without warrant of a child in section 5.

Mr Bromm: The only examples I can provide would be those that were given to us by the police when we consulted with them on the bill. There were basically two scenarios. One scenario is when the police are aware of a certain individual. For example, in Toronto there is a unit that deals specifically with street youth and children involved in prostitution. They become very aware of who these kids are. They know that there's a child who requires intervention but they do not see the child often. If a circumstance arises where they come across that child, if they have to stop and obtain a warrant, then the ability to pick up that child is going to be extremely limited because of the fact that they do not come across that child on many occasions.

The second circumstance is of course the circumstance in which they're perhaps conducting an investigation for other activity and they come across a child. For example, they may go to an escort service or an adult entertainment facility with completely other intentions in mind and they happen to find a child in that location. Again, if they have to stop and obtain a warrant, then they limit their ability to pick up the child in those circumstances.

Mr Kormos: It is interesting that you described the two scenarios described by the police, because the qualification here says "that it is impracticable in the circumstances to obtain a warrant ... before apprehending the individual." That seems to me to be the thrust of it because you've got "and" combining the two sections. We know, for instance, that the subject matter of the warrant

doesn't have to be known by name, right, because the previous section deals with that? It is not a matter of being able to ascertain identity. It doesn't say it would be difficult to exercise the warrant or impracticable to exercise the warrant. That's the scenario you're talking about, right, where you only see this person rather infrequently? That's a scenario where it would be difficult or impracticable to exercise a warrant, isn't it?

Mr Bromm: The section contemplates that the two in that circumstance are actually the same situation, where obtaining and exercising the warrant, because they are usually very time-limited, would become the same thing because they cannot obtain a general warrant with a long life to pick up a particular individual. So they can't stop and go back and get that warrant if there's a flight risk.

Mr Kormos: "It is impracticable in the circumstances to obtain a warrant under section 4 before apprehending the individual."

Mr Bromm: That particular wording in that circumstance is something that has already been defined by the Supreme Court of Canada.

Mr Kormos: Help me because I'm aware of the breathalyser tests as soon as practicable.

Mr Bromm: This is in relation specifically to child apprehension proceedings. What the Supreme Court has held is basically that the test is impracticality, that if you're dealing with a child in need of protection, all you need to establish is that it is impractical to obtain a warrant before you're able to pick up that child without a warrant. The court has held that that's all the standard that you need to meet in child protection proceedings, because of the risk inherent in it with a child in those situations.

1740

Mr Kormos: OK. I appreciate that. I don't expect you to have—I'm not being facetious. Maybe you could get the citation to me in the morning, if it's not impracticable for you to do that. I'd appreciate it because that resolves that problem for me and my concern about it.

I appreciate the direction given by Mr Bromm in this regard, and I do want to look at the case, because if that's the answer to the question, then I accept that. Then the section becomes less inherently contradictory than it would appear otherwise. But once again, I think we're talking about a child here, which means a 16- or 17-year old—a 17-year-old plus 11 months plus 29 days. You're talking about a young person who literally one day is exploited and needs protection, to wit, by being taken into custody, but the next day is no longer sexually exploited because they've just had their 18th birthday. You've got to understand. You may or may not have heard my comments on second reading during the debate, but I just find this whole approach to be wacky. I do. I find the approach to be one of street cleaning and street sweeping and feel-good.

Let me make something perfectly clear, and I know that Mr Bartolucci, for instance, has been very articulate in presenting real-life scenarios, real-life cases. I don't think there are any of us—if there are, we've been blessed—who, in our own families or in the family of friends or, as MPPs, in the family of constituents or, as lawyers, in clients' families, haven't seen the incredible pain of a family whose kid at the very least, from their perspective, gets derailed, gets caught up in the drug world, gets caught up in the sex trade—and worse. Again, to say it can't happen to any family is naive because it can happen to any family. It isn't an indicator of how well parents take care of a kid, how much they love a kid. Families are dealing with some strong competing interests out there and the subcultures that accommodate the activities referred to here, along with other stuff, along with drug use—dangerous drug use. I'm not talking about kids experimenting with pot, I'm talking about dangerous underworld drug use where kids—and adults—are getting hooked, getting sucked in, and where the sex trade becomes one of the options.

To imply that every prostitute is a drug addict is naive, of course, but to suggest that there's no relationship between the two is equally naive and absurd, because what would motivate young people? Clearly we're talking about issues of homelessness, we're talking about, yes, the criminalization of squeegeeing. There are people, Mr Bryant and myself among others, who have suggested that criminalization of squeegeeing could well serve the function of driving young homeless people into the drug trade, into the sex trade, into the theft trade, if you will, the stolen-car-radio trade, the smash-and-grab jewellery-store-window trade.

But this just seems to me to be, at first blush, the response that appeals to, let's say, yes, families who feel that the system didn't give them a capacity to intervene in a child's life when that child had gone off-rail, from that family's point of view. But I also say it's an approach—and we'll get into this as the bill progresses and when we talk about the maximum periods of time for which a person contemplated by this act can be held in these custodial settings. I'm incredibly concerned about the failure of the government to design even a model for the places, the space, in which a young person apprehended under this bill will be kept even during the preliminary processing, not even the guarantee that it's going to be isolated from criminal facilities.

I put to you that at the end of the day—look, police work within police cultures. Police are not social workers. There are a whole lot of cops who do policing with a social work bent, but at the end of the day they're not social workers. They work out of police stations with lockups, they carry guns and batons, along with other tools of the trade, as they should. I suggest to you that the vast majority of the so-called apprehensions, especially the warrantless ones, are going to be done by police officers, because it's cops who are out there on the street witnessing what's going on, which will give them reasonable grounds to believe. The majority of apprehensions, especially the warrantless ones, are going to be done by police officers. Police officers work within a policing culture, within a policing milieu. Police officers, when they take somebody into their police car, put them

in the locked-up backseat of the police car with the door handles that don't work. When they're waiting to take that person before a justice, a JP, they lock them up in cells. That's what police do. That's what policing is about. The policing perspective is one of detecting criminal behaviour.

I understand the care that appears to have been put into section 1, but my position is that it becomes clearer and clearer as we progress through this bill section by section that we're talking about putting young people, who may well be victims, into a literal physical context where they're being treated as criminals. I resent that and I also say that's not the answer. I leave it at that.

The Chair: Does that conclude—

Mr Tilson: Yes. I think we're ready to vote on section 5, Mr Chair.

The Chair: Shall section 5 carry? All those in favour? And those opposed? I declare section 5 carried.

With respect to section 6, we have a Liberal motion, on page 3. I ask for that motion.

Mr Bartolucci: I move that section 6 of the bill be amended by striking out "six months" and substituting it with "24 months."

The Chair: Is there any comment on that, Mr Bartolucci?

Mr Bartolucci: We've spent considerable time debating the merits of the bill. The bill that I put forth the first time envisioned two things: (1) protecting these children who are victims and (2) ensuring that offences are treated severely enough to warrant serious consideration before one chooses to violate the rights of a child to a healthy upbringing. So I would suggest that the government's mandate of six months isn't severe enough and would ask for 24 months.

Mr Kormos: I want to ask Mr Bromm, because the six months—for instance, this morning I was reading section 112 of the Municipal Elections Act, which talked about the offence of voting when you're not entitled to. The penalty, of course—it's corrupt practices, which I thought was interesting—is a maximum fine of $5,000 or six months in jail. I just happened to be looking up that section of the Municipal Elections Act this morning.

Mr Carl DeFaria (Mississauga East): Is the reason for that because of summary offences?

Mr Kormos: I was reading—

Mr DeFaria: But isn't it a maximum of six months?

Mr Kormos: Yes, that's what I want to get to, because there is the pattern of six months. Is there something to that in terms of provincial offences and can you help us with that? Is there something to the six-month number, which is what Mr DeFaria I think is getting to?

Mr Bromm: There isn't a six-month limitation, for example, on provincial offences. As you probably know from other provisions in the statute that provide for certain offences such as violating a court order, the potential imprisonment period is longer. I wouldn't even pretend to be able to make sense of the myriad of provincial offences and the different imprisonment periods that they provide for. The only thing I can say is that in this particular section it was set out based on what the reasonable assumption was that the court would impose if someone were convicted under this particular section. But it wasn't based on guidance from the court in terms of how long you can impose or anything like that.

Mr Kormos: Because Mr Bartolucci is suggesting pen time, right, which starts at 24 months, which may not be what he intends, because 24 months in a federal institution—you'll serve a lot less time than two years less a day in a provincial institution.

Mr DeFaria: If I may, Mr Bromm, under the summary offences act—because you'd have to proceed basically as a summary offence?

Mr Bromm: Yes.

Mr DeFaria: Is there a limit of six months in prison under that act?

Mr Bromm: I can check that out but I'm not aware—

Mr DeFaria: I think that's probably why most of these offences are six months, unless you can get them out of the summary offences act.

Mr Kormos: I'd love to learn whether that's the case or not. Part of my suspicion was always that should there be a custodial penalty that is too high, you then blur the distinction between criminal offences versus provincial offences. As I understand it, one of the qualities of criminal offences, although not exclusively for criminal offences, as compared to regulatory offences is of course the loss of liberty. But that's just mere meandering on my part. Maybe this should be held down until tomorrow.

Mr Tilson: Mr Chairman, just to muddy it a little bit—I don't know whether I've spoken to Mr Bryant—the government is prepared to partially agree with this, only we're suggesting 12 months as opposed to 24 months. If Mr Bartolucci agrees to that, then I won't have to do anything. If he doesn't agree to that, I'd like to know the procedure. I guess we defeat his and I make another amendment.

Mr Bartolucci: Mr Chair, I would move an amendment to this motion, that it read, instead of "six months," "12 months," rather than "24 months." Is that in order?

The Chair: Yes. We can draft a new amendment, essentially.

Mr Tilson: I believe there's something that's filed with the clerk.

Mr Bromm: No, it hasn't been.

Mr Tilson: It hasn't been filed. Well, there you go.

Mr Bartolucci: It's a lot easier if we just simply amend this motion.

Mr Tilson: It seems to me Mr Bartolucci is withdrawing his amendment and proposing one that reads, "I move that section 6 of the bill be amended by striking out 'six months' and substituting '12 months.'"

Mr Bartolucci: That's what I said.

Mr Tilson: Yes. The government would agree with that.

The Chair: The clerk advises me that we just have to be clear whether we are withdrawing this amendment and substituting a new one or just amending this amendment.

Mr Bartolucci: I would suggest whatever is easiest for the clerk and the committee. It amounts to the same thing. So I would simply state that I withdraw the motion and move that section 6 of the bill be amended by striking out "six months" and substituting "12 months."

Mr Kormos: If I may, Chair, the bells are ringing. We've got to get into the House to vote. I'd suggest that takes us over into tomorrow, and that means the amendment can be cleaned up and presented.

The Chair: Is that amenable to everybody? The committee is adjourned.

The committee adjourned at 1753.

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Also taking part / Autres participants et participantes
Mr William Bromm, Ministry of the Attorney General

Clerk / Greffier
Mr Tom Prins

Staff / Personnel
Ms Catherine MacNaughton, legislative counsel