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Monday 9 February 2004

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Lundi 9 février 2004

Standing committee on general government

Health Information Protection Act, 2003

Comité permanent des affaires gouvernementales

Loi de 2003 sur la protection des renseignements sur la santé

Chair: Jean-Marc Lalonde
Clerk: Tonia Grannum

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Monday 9 February 2004

Lundi 9 février 2004

The committee met at 1008 in room 151.

HEALTH INFORMATION PROTECTION ACT, 2003

LOI DE 2003 SUR LA PROTECTION DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

The Chair (Mr Jean-Marc Lalonde): Good morning, ladies and gentlemen. We'll get rolling. Thank you for being on time. Tomorrow morning, we'll start to make it exactly 10. At noon today, when we recess for lunch, we'll start back at one o'clock.

We have to deal with 154 amendments that everybody has received. Each member will be allowed up to a maximum of 20 minutes each time you are speaking.

This morning is the clause-by-clause consideration of Bill 31. We will start immediately with the amendment of section—there are really four sections. We will come back to this first page that we have on the bill, but we will deal with each section of schedule A immediately.

The first one that we have is an amendment moved by the NDP.

Ms Shelley Martel (Nickel Belt): I move that section 1 of the Personal Health Information Protection Act, 2003 be amended by adding the following clause:

"(c.1) to enable personal information to be shared and accessed, where appropriate, to manage the health system."

This was a recommendation that was made in the presentation by Cancer Care Ontario. It's some additional information as to what the purposes of the act are. In their case, it was particularly a concern around "shared and accessible," given their role with registries and other health information related to cancer.

The Chair: Are there any comments or questions on this amendment moved by Ms Martel?

Mr Peter Fonseca (Mississauga East): The purpose here was not to allow the information to be accessed and shared but to control and restrict access of information.

The Chair: Any other comments?

Ms Martel: The dilemma is that CCO does have to share personal information in terms of the work that it carries out, both through the registry and with the individual cancer treatment centres. So I don't think there was any sense that in the sharing of that information they were going to disclose purposely or wilfully or be neglectful in that regard, but it was to try to get the committee to understand that their role does have a very specific sharing in order to allow them to do their work, in order for them to maintain the registry, in order for them to report to government on cancer statistics. I don't think there is anything untoward in terms of what they were suggesting.

The Chair: Other comments or questions? If none, we will proceed immediately with the voting.

All those in favour of the amendment moved by Ms Martel? Two.

All those against the amendment? Five.

The amendment is defeated.

Any other comments on section 1?

Shall section 1 carry? Everybody agree? No comments? Thank you.

We'll move on to the second one. We're on section 2. Any amendment?

Ms Martel: I had proposed two amendments that were put forward in the presentation by NAID with respect to both "destroy" and "dispose," so I'm dealing with both.

In discussion this morning with counsel from the ministry, the ministry advised that there will be ongoing discussions with NAID to determine the regulations that will best deal with how information is both disposed of and destroyed, and it will be done by regulation. Given that I have had that undertaking, I will withdraw those two amendments.

Clerk of the Committee (Ms Tonia Grannum): On page 2 and page 3?

Ms Martel: Yes, both the amendment that had a definition for "destroy" and the next one, which had a definition of "dispose."

The Chair: Both amendments have been withdrawn.

We'll move on to schedule A of the bill, the definition of "health care practitioner" in section 2.

Ms Martel: I move that the definition of "health care practitioner" in section 2 of the Personal Health Information Protection Act, 2003 be amended by adding the following clause:

"(b.1) a chaplain employed or accredited by a health information custodian."

This is the first of several amendments that I've moved with respect to the faith communities and their desire to have some clarity in the bill which would allow faith communities to gain access, particularly to patients in hospitals. I gather that the government is bringing forward amendments this morning as well, so I'm not sure if yours are going to override mine, but I wanted someone to address it. You can let me know right now how you want to deal with that.

The Chair: Any comments, please?

Mr Fonseca: We will have our own fix of the chaplain issue in subsection 20(4). The ministry may be able to shed some *[inaudible]*.

Mr Michael Orr: I think we've provided a copy to the clerk.

The Chair: Could you introduce yourself, please?

Mr Orr: Michael Orr, counsel, Ministry of Health. I will read the principal amendment. The principal amendment being proposed is one to section 20. The motion would be that it be amended by adding a subsection which would say:

"(4) If an individual who is a resident or patient in a facility that is a health information custodian provides to the custodian information about his or her religious or other organizational affiliation, the facility may assume that it has the individual's implied consent to provide his or her name and location in the facility to a representative of the religious or other organization where the custodian has offered the individual the opportunity to withhold or withdraw the consent and the individual has not done so."

The idea there is that where the person provides the information about their religion and the facility offers the opportunity to the individual to withhold their consent from that being shared outside religious representatives for visiting purposes, then in that case they can assume that they have the individual's implied consent to provide his or her name or location only to the representative of the religious organization.

There is another amendment to section 18 which is simply for the purpose of facilitating that. I believe that it will be distributed. It's adding a subsection 18(3.1) and it says:

"(3.1) Subsection (3) does not apply to,

"(a) a disclosure pursuant to an implied consent described in subsection 20(4); or

"(b) a prescribed type of disclosure that does not include information about an individual's state of health."

The idea there is that although generally there is a requirement under 18(3) that information being provide to a non-health information custodian requires express consent, this would be an exception that would facilitate that.

Ms Martel: May I ask one other question just on this? I think that's great. My concern remains as follows: If someone comes in in an emergency and they're not in a position to provide consent, what do you do in that circumstance? You're talking about last rights being provided as well. What do we do then?

Mr Orr: The idea is that they have offered the individual an opportunity to withhold or withdraw the consent.

Ms Martel: I know you've gone part of the way because you've offered that, perhaps at admission. If they tick off the box that says they have a religious affiliation, that goes part of the way. My second concern is if they come in through emergency and they're seriously ill.

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Mr Orr: In those situations it may be something that was going to have to rely on substitute consent provisions. I should point out too that this only applies to disclosures, which means outside the organization. It doesn't apply to uses within the organization, so the chaplain of the institution, for instance, in providing services on behalf of the institution, would be able to provide services and have access to the individual's information for the purpose of performing his or her functions.

Mrs Elizabeth Witmer (Kitchener-Waterloo): Have you had an opportunity to run this by those from the religious orders who appeared before this committee? I'd be interested to see what shortcomings they could see. I think Ms Martel had identified the fact that somebody coming in through emergency who's unconscious, has no family, has been in a car accident or what have you obviously is not going to have the ability to let you know whether or not they want to give their consent.

Mr Orr: It's a good question. No, we have not yet run it by the faith communities and I think it's something we would like to do. One thing to consider, and I think it's something to consider just in the context of all our deliberations this morning, is the stage we're at, which is that we haven't yet reached second reading, and after second reading there will be opportunity to make some technical kinds of fixes.

Mrs Witmer: Mr Chair, maybe at this point in time, since it's my understanding that most of the stakeholders who made submissions are not aware of the fact that we're doing clause-by-clause today and haven't had the opportunity to review these amendments to determine whether or not they would address their concerns, if you would just put on the public record the process that will follow once we reach and make our final decisions today so that the public knows what type of further input they can provide between now and the final passage of the bill.

Mr Orr: Once we've gone through the process today, then I believe the next stage is that it gets reported back to the Legislature. Once we finish making amendments in committee, then I believe it gets reported back to the Legislature and it would be past second reading. At that stage, people would have the ability to access the bill and see the changes that have been made. At that stage, I believe there is an intention—and I'll look for confirmation.

Mr Fonseca: Yes, it is the government's intention to take it to committee after second reading.

Mr Orr: At that stage, if it goes to committee after second reading, then there will be the ability to address any concerns those groups may have with the bill that they have seen.

Mrs Witmer: As we go through the clause-by-clause today, then it's my understanding that the stakeholders haven't been contacted, and these amendments do not have their approval. The only other opportunity they would have now is when it goes to committee of the whole.

Ms Halyna Perun: My name is Halyna Perun. Some of the amendments, the government motions, have in fact been reviewed by particular stakeholder groups, and we could identify those motions where there has been consultation. Not all of them have had this type of consultation, but certainly with respect for example to the chaplaincy issue there would be something we'd still like to review with the organizations that submitted to the committee to make sure that all of their issues are addressed in the context of the amendments that were made.

Mrs Witmer: That would be really helpful, because we didn't get our package, obviously, until late Friday night. There certainly hasn't been an opportunity for us to communicate with all the stakeholders. I think it is important that the presentations that were made—hopefully we've tried to reflect the concerns to make this bill the best we can possibly make it, and we're still getting amendments now that we haven't seen.

So if you could, as we're going along, identify the ones that you feel have had stakeholder consultation and support, that would be really useful.

Ms Perun: Also, in terms of the process, because some of the submissions were due on Friday, and we as staff actually haven't had the opportunity to review all the submissions that have come in, we certainly would like the opportunity to address some of the some of the issues that perhaps this committee hasn't heard but that are reflected in the written submissions. Therefore, the second-reading and clause-by-clause approach would address the written submissions.

Mrs Witmer: Right, and that would give us the opportunity to make the additional amendments that would seem to be there to allow the bill to be improved. That's great. Thank you very much.

Ms Martel: I've heard what the government has to say, so I appreciate that we are going some way. You've heard my concerns and you've given us an undertaking that we're going back to the groups that raised it in the beginning to run the language by them and if we need some further amendments, they will come.

So why don't I withdraw my amendment and move yours when the time comes? I would withdraw.

The Chair: So the amendment has been withdrawn for the present time.

The next one is the Conservative amendment.

Mrs Witmer: I move that section 2 of the Personal Health Information Protection Act, 2003 be amended by adding the following definition:

"'information manager' has the meaning set out in subsection 17.1(1)."

As you know, this was a request that had been made by Smart Systems in order to make sure that this legislation did include their being defined within Bill 3l.

I understand that this is very similar to privacy legislation that has been introduced in Manitoba, Saskatchewan and Alberta, where the role of the information manager is defined, and it is a person other than the agent with whom a health information custodian contracts for services that include the processing, storage and disposal of records that contain personal health information or information management, information technology or networking services to the custodian with respect to the custodian's records that contain personal health information.

The Chair: Any questions or comments?

Mr Fonseca: We have our own fix to the information manager issue in section 43.1, where we will set up a CIHI and ICES—

Mrs Witmer: What page is that, Peter?

Mr Fonseca: That is section 43.1, on page 79, where we will set up a CIHI-ICES-like data institute. Smart Systems for Health should be dealt with by regulations because it is an evolving organization.

Mrs Witmer: So it would be your plan to review this with those who have made this request to ensure that it does cover the concern they have and you want to treat it differently than it's being treated in the other provinces?

Mr Fonseca: Yes. I'll refer that to the ministry.

Ms Carol Appathurai: I just wanted to give a little context to the term "information manager." We did have this term in Bill 159, along with "agent," and we found that there was a great deal of confusion among stakeholders as to the meaning of "information manager," which in fact is a subset of the term "agent," and was put in there originally to ensure that the hospitals, when they hire information managers who look after their records and do their dictatyping, would be able to handle the information. When we talked with stakeholders, they recognized that this was a subterm of "agent" and suggested that we remove "information manager."

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In fact, Smart Systems for Health does not handle, as it is presently constituted, health information. You will remember that at their presentation they indicated they only provide the pipeline for the movement of information, so it might be misleading to label them as an "information manager." However, we do understand that they have special needs, and those needs can be addressed in regulation. Halyna will speak to that in more detail.

Ms Perun: There is also a proposed government motion at page 37—I just wanted to put this into context—with respect to section 17. There is a proposal to render that provision a little bit more flexible, to recognize that an agent sometimes will require to use or disclose the information outside of a control put on the agent by the custodian. That also would address some of the issues

that Smart Systems for Health raised in terms of their conduct with subcontractors.

In addition, we have a provision already in the bill which addresses the electronic transmission of information, which is set out in subsection 10(3), where a custodian that uses electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with the prescribed requirements, if any. So then again, here, with respect to electronic transmissions, we were thinking that we would work with Smart Systems for Health to determine what requirements are necessary.

With respect to section 17 and their proposal to have an agreement in place—and they actually spelled out up front what they would like to see in the legislation—this type of agreement is certainly envisioned, but again, in regulations. Clause 17(1)(c) speaks to the prescribed requirements, if any, and then in the regulation-making powers we actually address agreements specifically around electronic transmission. So what we'd like to do is in fact work with Smart Systems for Health to address their systems and also then to determine the entire regulation under this legislation.

Of course, if it turns out that we in fact do need to address their specific issue by some specific provision in the bill, we would come back to that at second reading.

Mrs Witmer: I appreciate your explanation. So you haven't talked to Smart Systems yet but I guess you're committing that you're going to make sure that the concerns they had will be addressed.

I just have one question, then. You've indicated there is this amendment on page 79 and you indicate in the first line here:

"43.1(1) A health information custodian may disclose to a prescribed entity.... "

Is that entity defined anywhere?

Ms Perun: No, it's not, actually. This amendment, section 43.1, really speaks more not to Smart Systems for Health but to CIHI, ICES and Cancer Care Ontario, for example, which would be the kinds of prescribed entities that would be prescribed under this section.

The amendment with respect to Smart Systems for Health particularly is the amendment at page 37, subsection 17(2), which is basically, as I indicated, just to allow a little bit more flexibility around the responsibilities of agents separate from the custodian.

Mrs Witmer: I'll withdraw the amendment, then, based on the information I've been provided.

The Chair: So this amendment has been withdrawn.

We'll move on to the next one, an NDP motion.

Ms Martel: The next two motions I moved as a result of a presentation that was made to us by the Canadian Mental Health Association, by Patti Bregman. I'm advised this morning by counsel that there will be changes that will be made in the Health Care Consent Act with respect to spouse, which is the next one. I'm forgetting why it was all right for "relative" not to be changed. Sorry, do you want to tell me again?

Ms Perun: This is very technical. There was a concern that the Canadian Mental Health Association did raise to make sure that the word "relative" was consistent to the Health Care Consent Act words. In fact, they are; it's just that they appear differently.

"Relative" in the definitions section of Bill 31, which is on page 8, "means either of two persons who are related to each other by blood, marriage or adoption." In the Health Care Consent Act, it was chosen to say "'in relation to two persons' means that they are related by blood, marriage or adoption."

If we change it in this way, I just want to note that we already have this approach. In our definition of "partner" on page 7, again, it says "means either of two persons." "Partner" means one person. He or she is just a partner of the other person. A "relative" means one person who's a relative of the other person. "Spouse" also means either of two persons. So just for consistency purposes, I would say that it should be the same. However, it's a very technical explanation.

Ms Martel: That's all right. You're going to make a change with respect to "spouse," but the change that you're going to make there when you go back in is going to be to the Health Care Consent Act.

Ms Perun: Right. With respect to the next motion, the issue here is that in Bill 31, the definition of spouse is that they are married to each other, except if they are living separate and apart. Basically, if you are married but you are apart, you shouldn't be making substitute decisions on behalf of someone you're estranged from. That is why in the Health Care Consent Act, it goes on further to say "within the meaning of the Divorce Act," because in the Divorce Act, if you live separate and apart for a year, that's your "apart."

The issue with the Divorce Act, however, is that the spouse means "either of a man or a woman who are married to each other." The approach taken in this particular bill, as well as other amendments to the Health Care Consent Act, already recognizes conjugal relations of any kind as equal so that, therefore, there is in fact a need to amend the Health Care Consent Act to delete the words "within the meaning of the Divorce Act." There will be a motion to address that issue.

Ms Martel: Mr Chair, if I might, I will withdraw both the definition of "relative" and then the next one, definition of "spouse."

The Chair: So both have been withdrawn. Any further discussion on section 2? If not, we'll move on to the next one.

Shall section 2 carry? All those in favour? Against? Carried.

Now we'll move on to section 3. Government motion.

Mr Fonseca: Schedule A of the bill, definition of "health information custodian" in subsection 3(1) of the Personal Health Information Protection Act:

I move that the definition of "health information custodian" in subsection 3(1) of the Personal Health Information Protection Act, 2003 be amended by striking out

the portion before paragraph 1 and substituting the following:

"'health information custodian,' subject to subsections (2) to (10), means a person or organization described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the person's powers or duties or the work described in the paragraph, if any."

The Chair: Questions or comments?

Mrs Witmer: Yes, just a question. You've added the word "organization." Why would you not have, or should you, in the last line, "performing the person's or organization's powers or duties"? Is there any need to repeat that again?

Mr Fonseca: Industry Canada requested to make it more similar to PIPEDA to add "organization."

Mrs Witmer: OK. Just in that one instance?

Ms Perun: The advice of Industry Canada was because PIPEDA addresses "organization." In our view, we really didn't need that particular word, but they just asked that it appear at least once in the definition of custodian. That's why it's there.

1040

The Chair: Any more comments or questions? If not, we'll vote. All those in favour of the amendment, as moved by Mr Fonseca? Against, if any? Carried.

The next one is a government motion.

Mr Fonseca: Schedule A to the bill (paragraph 1 of the definition of "health information custodian" in subsection 3(1) of the Personal Health Information Protection Act, 2003).

I move that paragraph 1 of the definition of "health information custodian" in subsection 3(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"1. A health care practitioner or a person who operates a group practice of health care practitioners."

The Chair: Questions or comments? If none, all in favour? Against, if any? Carried.

Shall section 4—

Interjection.

The Chair: There's one more? A couple more, sorry.

The next one is a PC motion.

Mrs Witmer: Yes. I guess in light of the explanation that I've been given as far as the definition of "health information custodian," I'm not sure that it's necessary any more. But anyway, I move that paragraph 3 of the definition of "health information custodian" in subsection 3(1) of the Personal Health Information Protection Act, 2003 be amended by adding the following subparagraphs:

"viii. Cancer Care Ontario.

"ix. Cardiac Care Network.

"x. Ontario Joint Replacement Registry."

Perhaps the ministry staff could review as to why this may no longer be necessary.

Ms Appathurai: It was our intention that these health information custodians in regulation—you'll notice that under the definition of "health information custodian," the last subparagraph, subparagraph vii, gives us the power to prescribe in or prescribe out. That gives us flexibility to adjust to change. Two years ago Cancer Care Ontario was a health care provider; in fact, it no longer provides health care. We don't want to fix in stone in the legislation, but give ourselves flexibility in the regs. As well, the Ontario Joint Replacement Registry in fact is not an independent entity, but could be listed as appropriate through the regulations as a registry. Again, the Cardiac Care Network is a registry; it doesn't really provide health care.

In addition, there are, I've been told, over 100 registries floating out there and we would then want to look at each one of those and see where they would be appropriately placed, either as a custodian or as a registry, depending on the services they provide. But we would like to do that through the regulations because it gives us more time and more flexibility.

Mrs Witmer: Thank you very much. I would withdraw this, based on the explanation.

The Chair: So this one is withdrawn. We'll move on to the second one. It's an NDP motion.

Ms Martel: The amendments are the same, but I had another question, and I think this stems from the presentation we heard in London, where we heard two very different presentations about how the joint registry was going to be described. We heard the hospital say that essentially they wanted to be the custodian, and we heard from the registry that there might be some need for them to be a custodian. So I appreciate that you would like to do this by regulation. But that doesn't solve, in my mind at least, where you might be going with respect to that particular issue and who's going to prevail. Because that is an issue that I think has to be sorted out.

I'd also like to know—because this was certainly a specific amendment that Cancer Care Ontario had requested—have you had discussions with any of those three to let them know this is the ministry's preferred method?

Ms Perun: With respect to Cancer Care Ontario, we've had discussions where we have indicated that they would be listed as a custodian under the act. As well, they could certainly be listed as a registry. There's a disclosure without consent for the purposes of the specific registries that are prescribed and also with respect to this new proposed section 43.1, where one of the prescribed entities would be Cancer Care Ontario. So we've discussed it with Cancer Care Ontario.

Now with respect to—

Ms Martel: Halyna, before you start, then—pardon me for a second. If you've told them that, will they not then be registered under this subsection 3(1), if you've told them they're going to appear as a health care custodian?

Ms Perun: That's right. But it would be under the regulations—

Ms Martel: Seven.

Ms Perun: —which would be section 7, yes. Any other person prescribed as a health information cus-

todian, then their issue is—I'm guessing that they would then say that they should be within the circle of care, able to rely on the implied consent rule. In that case, the regulation-making powers under this bill do allow for including entities that are prescribed under section 7 to also be included in certain provisions of the act, such as the implied consent rule or a circle of care.

Ms Martel: There was already a great deal that was going to be done by regulation. I appreciate that you're working with the presentations that we all saw at the very last minute, but I would feel more comfortable knowing when we come back to this, that as much that can be moved into legislation be moved. I just think there's a lot going on in regulation right now and I'm not terribly comfortable with that continuing. If you see opportunities where we can work in reverse, I think that's what we need to try and do when we come back to this.

So Chair, based on that and on the previous explanation to Ms Witmer, I will withdraw the amendments.

Clerk of the Committee: Sorry, Ms Martel, amendments on pages 11 and 12?

Ms Martel: The next two. So there was an amendment to include Cancer Care Ontario, the next one was the Ontario Joint Replacement and then Cardiac Care Network.

The Chair: Thank you. So we'll move on to amendment 14, the government motion.

Mr Fonseca: I move that paragraph 1 of subsection 3(2) of the Personal Health Information Protection Act, 2003 be amended by striking out "unless the person is deemed to be a separate health information custodian under this section" at the end.

The Chair: Questions or comments? If none, all in favour of the amendment? Against, if any? Carried.

NDP motion number 14.

Ms Martel: This goes back to recommendations that were made to us by Smart Systems and, given the earlier explanation of how the ministry is going to work with them to deal with their concerns, I will withdraw the motion.

The Chair: Withdrawn. Thank you. Government motion 16?

Clerk of the Committee: Section 3.

The Chair: Sorry, thank you. Section 3. Shall section 3, as amended, carry? Against? Carried.

Now we'll move on to section 4, government motion 16.

Mr Fonseca: I move that clauses (b) and (g) of the definition of "personal health information" in subsection 4(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual," ...

"(g) identifies an individual's substitute decision-maker."

1050

The Chair: Questions or comments? If none, in favour? Against, if any? Carried.

Amendment number 17, a government motion.

Mr Fonseca: I move that the definition of "identifying information" in subsection 4(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"'identifying information' means information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual."

The Chair: Questions or comments? If none, in favour? Against, if any? Carried.

Shall section 4, as amended, carry? In favour? Against? None. Carried. Section 4 has been carried, as amended.

Section 5: There's no amendment on this one, I believe. Any discussion on section 5? If none, shall section 5 carry? Against? Carried.

We'll move on to section 6 and the amendment by the NDP, number 18.

Ms Martel: I'm sorry, Chair. I see there are three different amendments. Ms Witmer's and mine are the same. I'm just trying to remember who gave us that information. I'm sorry, Mr Chair. My apologies.

Ms Perun: That's the Smart Systems for Health—

Ms Martel: All right. Thank you very much, Halyna, for helping me out.

I would withdraw mine, given the conversation the ministry is going to have with Smart Systems.

The Chair: So amendment number 18 is withdrawn.

Amendment number 19, a PC motion.

Mrs Witmer: Our motion is similar to the NDP motion, and in light of the discussion, I would withdraw it as well.

The Chair: So amendment number 19 has been withdrawn.

Amendment number 20, a government motion.

Mr Fonseca: I move that subsection 6(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Interpretation

"6. (1) For the purposes of this act, the providing of personal health information between a health information custodian and an agent of the custodian is a use by both persons, and not a disclosure by the person providing the information or a collection by the person to whom the information is provided."

The Chair: Questions or comments? If none, in favour? Against, if any? Carried.

Shall section 6 of schedule A carry, as amended? In favour? Against, if any? None. Carried.

Amendment number 21, a government motion.

Mr Fonseca: I move that section 7 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Interpretation

"(2.1) For the purpose of this section, there is no conflict unless it is not possible to comply with both this

act and its regulations and any other act or its regulations."

The Chair: Questions or comments?

Mrs Witmer: I would just like an explanation of why we're adding this and what the impact would be on other regulations and acts.

Mr Fonseca: If there are two acts, this allows the act with the higher standard to be followed, and it deals with the RHPA issue.

Ms Perun: If I may, just a further explanation. This is the first of a number of amendments that have been made, or are proposed to be made, to address the issues that were raised by the regulated health professions at the standing committee here. This one, for example, would address that issue that you heard, where one college said, "Well, if we expect accuracy, and your act says 'reasonable accuracy,' we would like to make sure that our members follow the accuracy standard." This proposed motion basically would speak to that. In other words, where you can comply with both, there's no conflict. This motion, as well as a number of other motions that address that RHPA type of amendments, has been reviewed and approved by the Federation of Health Regulatory Colleges of Ontario.

Mrs Witmer: Thank you very much for that explanation and also listening to the concerns that had been raised by the colleges.

Ms Martel: If I might, when we get to the relevant sections, and I know there are more coming, if you could identify those, that would be useful, because we have amendments as well. We need to know which ones we have to withdraw.

The Chair: Any more comments or questions? If none, those in favour of the amendment? Against, if any? None? The motion is carried.

Amendment number 22, an NDP amendment.

Ms Martel: I'm going to ask Halyna for an explanation, because this was also one of the changes that was proposed by a number of the groups.

Ms Perun: With respect to the NDP motion on page 22, the motion that was just passed would address the conflict issue, so therefore, in my view, subsection (4) is not needed in light of the change made in subsection 7(2.1).

Then later on there is also a proposed government motion pertaining to subsection 9(2) that deals with the issue of not interfering with college activities. That is set out on page 28, which is subsection 9(2), an addition to 9.1 of subsection 9(2).

Ms Martel: Mr Chair, given that the previous amendment fixes what we needed fixed, I will withdraw my motion.

The Chair: Amendment number 22 has been withdrawn by Ms Martel.

We'll move on to amendment number 23, a PC motion.

Mrs Witmer: Thank you very much, Mr Chair. I move that section 7 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection. I'm going to take out number 4, in light of what we've heard, but I would like to include:

"Exception

"(5) This act and its regulations shall prevail in the event of a conflict between a provision under this act and a provision under Bill 8 (An Act to establish the Ontario Health Quality Council, to enact new legislation concerning health service accessibility and repeal the Health Care Accessibility Act, to provide for accountability in the health service sector, and to amend the Health Insurance Act) introduced November 27, 2003."

We presently have two acts that both deal with privacy legislation, and I want to make absolutely certain that this bill does prevail over the provisions that are contemplated in Bill 8.

Ms Kathleen O. Wynne (Don Valley West): The way Bill 31 is written now, it will prevail over Bill 8. That's how it has been drafted. So if there were to be any change, Bill 8 would have to be amended, but the way it's written, Bill 31 will prevail over Bill 8.

Ms Perun: Subsection 7(2) of Bill 31 at page 15 already says, "In the event of a conflict between a provision of this act or its regulations and a provision of any other act or its regulations, this act and its regulations prevail unless this act, its regulations or the other act specifically provide otherwise."

In other words, in order for Bill 8 to prevail over Bill 31, there would have to be either a specific reference about that in Bill 31 or a specific reference in Bill 8 to say that that act prevails over PHIPA; currently, it does not. The conflict provision already deals with that issue.

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Mrs Witmer: Basically, then, when we get to Bill 8 those provisions in there could be taken out.

Ms Perun: You have to make sure that that act does not say that act prevails over PHIPA.

Mr Jerry J. Ouellette (Oshawa): Does that mean they could bring in a regulation that says that act "prevails over" in Bill 8?

Ms Perun: In this bill, there could be a regulation that could be passed that would say that this act prevails over some other—

Mr Ouellette: No, what I'm asking is, in Bill 8 can a regulation come out that says that that act prevails over this act?

Ms Perun: No, because it says, "or the other act specifically provide otherwise." It has to be actually right in the legislation; it cannot be in the regulations.

Ms Wynne: So, as I understand it, it would have to say in Bill 8 that Bill 8 prevails over Bill 31—in the legislation.

Ms Perun: That's right.

Ms Wynne: Which it doesn't say. That's what I meant. Bill 8 would have to be amended in order for it to prevail over Bill 31. If Bill 8 is not amended actually in the legislation, then Bill 31 will prevail over Bill 8.

Ms Perun: Right.

Mrs Witmer: I withdraw this amendment.

The Chair: So amendment number 23 has been withdrawn.

Shall section 7 of schedule A carry, as amended? All those in favour? All those against? None. Carried.

Section 8: amendment number 24, a government motion.

Mr Fonseca: I move that subsection 8(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Exceptions

"(2) Sections 11, 12, 15, 16, 17, 33, 36 and 44 and subsection 35(2) of the Freedom of Information and Protection of Privacy Act and sections 5, 9, 10, 24, 25, 26 and 34 of the Municipal Freedom of Information and Protection of Privacy Act apply to a health information custodian that is an institution within the meaning of either of those acts, as the case may be, in respect of records of personal health information in the custody or control of the custodian.

"Same

"(2.1) A record of personal health information prepared by or in the custody or control of an institution as defined in the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act is deemed to be a record to which clause 32(b) of the Freedom of Information and Protection of Privacy Act and clause 25(1)(b) of the Municipal Freedom of Information and Protection of Privacy Act apply.

"Access under freedom of information legislation preserved

"(2.2) This act does not limit a person's right of access under section 10 of the Freedom of Information and Protection of Privacy Act or section 4 of the Municipal Freedom of Information and Protection of Privacy Act to a record of personal health information if all the types of information referred to in subsection 4(1) are reasonably severed from the record."

The Chair: Questions or comments?

Mr John Yakabuski (Renfrew-Nipissing-Pembroke): There are a number of sections that have been deleted, and some added, as a result of this amendment. Can we get an explanation on that?

Mr Orr: The changes to subsections 8(2) and 8(2.1) are basically technical changes. They're aimed at clarifying the duties of health information custodians covered at the same time by the Freedom of Information and Protection of Privacy Act or the municipal equivalent and achieving greater harmony between this bill and those two acts.

If I could just address a few of the particular sections that have changed, there has been an addition of section 17 of FIPPA and section 10 of MFIPPA. Those are mandatory non-disclosures of third-party information. What we've done here is all the mandatory non-disclosures in both acts have been maintained so that the ministry, for instance, will continue to be under an obligation not to disclose what it's under an obligation not to disclose now. That particular one was left out in error, so we put that in. All the non-disclosure provisions are now covered.

Now, 31 and 32, 34 and 35 of FIPPA—the references to the Freedom of Information and Protection of Privacy Act—were taken out of this section. The references to 31 and 32 were felt not to be necessary, given the fact that those sections apply primarily to the Secretary of Management Board. What we have done is added (2.1) simply to clarify that the records referred to under section 32 of FIPPA do indeed include personal health information.

The bottom line is that there is no policy change intended by these amendments. If you look in motion 119, some of the matters that were dealt with in the sections that were simply referred to have now been dealt with by making amendments to those sections rather than by referring to them here, so that it includes the references in both acts.

I'm not sure if you want me to address subsection (2.2) also.

Mr Yakabuski: No, I understand what you're getting at here. It's very technical.

The Chair: Other comments or questions? If none, in favour of government motion number 24? Against, if any? Carried.

Shall section 8 of schedule A carry, as amended? In favour? Against? None. Carried.

Motion number 25 of section 9 is a government motion.

Mr Fonseca: I move that clauses 9(2)(b) and (c) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(b) any legal privilege, including solicitor-client privilege;

"(c) the law of evidence or information otherwise available by law to a party or a witness in a proceeding;"

The Chair: Questions or comments?

Mrs Witmer: Just one question regarding the addition of the words in (b), "any legal privilege." What type of privileges would this cover?

Ms Perun: It was brought to our attention that this act should not interfere with other types of legal privileges, such as mediation privilege or settlement privilege. It was just a clarification.

Mrs Witmer: Thank you.

The Chair: Other comments or questions? If none, those in favour of amendment number 25? Against, if any? None. Carried.

Amendment number 26 is an NDP motion.

Ms Martel: This was to respond to some of the concerns that were raised by the faith communities. Since the ministry is going to undertake to talk to them to clarify their concerns further, I'll withdraw the amendment.

The Chair: Amendment number 26 has been withdrawn.

Amendment number 27, an NDP motion.

Ms Martel: Again, this came in the package that was given to us, I believe, by the federation in their presen-

tation, which was to try to sort out some of their concerns. It has been addressed somewhere, I'm sure. Do you mind just telling me?

Ms Perun: The next motion, at page 28, actually deals with it.

Ms Martel: Then I will withdraw my motion.

The Chair: Number 27 has been withdrawn, so we'll move on to motion number 28, a government motion.

Mr Fonseca: I move that subsection 9(2) of the Personal Health Information Protection Act, 2003 be amended by striking out "or" at the end of clause (d) and by adding the following clauses:

"(d.1) the regulatory activities of a college under the Regulated Health Professions Act, 1991, the college under the Social Work and Social Service Work Act, 1998 or the board under the Drugless Practitioners Act; or"

The Chair: Questions or comments? If none, those in favour of government motion number 28? Against? None. Carried.

The next one is amendment number 29, a PC motion.

Mrs Witmer: This motion, again, was intended to provide for the input we'd received from the regulated health professions, but that's now been addressed. I'd withdraw it.

1110

The Chair: Number 29 has been withdrawn by the PCs.

Shall section 9 of schedule A, as amended, carry? In favour? Against, if any? None. Carried.

Section 10: There is no amendment. Shall section 10 carry? In favour? Against? None. Section 10 is carried.

Ms Wynne: Chair, did we pass section 9?

The Chair: Yes, we did.

Section 11: There is no amendment. Shall section 11 carry? Against, if any? None. Section 11 is carried.

Section 12: There's a government motion.

Mr Fonseca: I move that subsection 12(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Security

"12(1) A health information custodian shall take steps that are reasonable in the circumstances to ensure that personal health information in the custodian's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal."

The Chair: Questions or comments? If none, those in favour of the amendment? Against, if any? None. Carried.

Shall section 12 of schedule A carry, as amended? In favour? Against? None. Carried, as amended.

Section 13: A government motion.

Mr Fonseca: I move that section 13 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Retention of records subject to a request

"(2) Despite subsection (1), a health information custodian that has custody or control of personal health information that is the subject of a request for access under section 51 shall retain the information for as long as necessary to allow the individual to exhaust any recourse under this act that he or she may have with respect to the request."

The Chair: Questions or comments? If none, shall amendment number 31 carry? In favour? Against, if any? None. Carried.

Shall section 13 of schedule A carry, as amended? In favour? Against, if any? None. Carried, as amended.

Section 14: A government motion.

Mr Fonseca: I move that section 14 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Records kept in individual's home

"14(1) A health information custodian may keep a record of personal health information about an individual in the individual's home in any reasonable manner to which the individual consents, subject to any restrictions set out in a regulation, bylaw or published guideline under the Regulated Health Professions Act, 1991, an act referred to in schedule 1 of that act, the Drugless Practitioners Act or the Social Work and Social Service Work Act, 1998.

"Records kept in other places

"(2) Subject to subsection (3), a health care practitioner referred to in clauses (a) to (c) of the definition of 'health care practitioner' in section 2 may keep a record of personal health information about an individual in a place other than the individual's home and other than a place in the control of the practitioner.

"Same

"(3) A health care practitioner may keep a record of personal health information about an individual in a place as permitted under subsection (2) if,

"(a) the record is kept in a reasonable manner;

"(b) the individual consents;

"(c) the health care practitioner is permitted to keep the record in the place in accordance with a regulation, bylaw or published guideline under the Regulated Health Professions Act, 1991, an act referred to in schedule 1 of that act, the Drugless Practitioners Act or the Social Work and Social Service Work Act, 1998; and

"(d) the prescribed conditions, if any, are satisfied."

The Chair: Questions or comments? None.

Shall amendment number 32 carry? In favour? Against? None. Carried.

Shall section 14 of schedule A, as amended, carry? In favour? Against, if any? None. Carried.

Section 15: amendment number 33, government motion.

Mr Fonseca: I move that subsection 15(4) of the Personal Health Information Protection Act, 2003 be amended by striking out "clauses (3)(c), (d) and (e)" and substituting "clauses (3)(b), (c), (d) and (e)."

The Chair: Questions or comments?

If none, shall amendment number 33 carry? Against, if any? None. Carried.

Shall section 15 of schedule A, as amended, carry? In favour? Against, if any? None. Carried, as amended.

Section 16: no amendment. Shall section 16 carry? In favour? Against, if any? None. Carried.

Section 17: amendment number 34, government motion.

Mr Fonseca: I move that subsection 17(1) of the Personal Health Information Protection Act, 2003 be amended by striking out the portion before clause (a) and substituting the following:

"Custodian responsible for agents

"17(1) A health information custodian is responsible for personal health information in the custody or control of the health information custodian and may permit the custodian's agents to collect, use, disclose, retain or dispose of personal health information on the custodian's behalf only if,"

The Chair: Questions or comments? If none, in favour of the amendment number 34? Against, if any? None. Amendment number 34 is carried.

Amendment number 35 is an NDP motion.

Ms Martel: Mr Chair, this was put in to address some of the concerns that have come forward by Smart Systems. Given that the ministry will work with them to deal with the concerns, I will withdraw it.

The Chair: So amendment number 35 has been withdrawn by Ms Martel. We'll move on to amendment number 36, a PC motion.

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Mrs Witmer: Likewise, this motion was intended to respond to the concerns raised by Smart Systems, and in light of our discussion I would withdraw this.

The Chair: Amendment number 36 has been withdrawn by Mrs Witmer.

We'll move on to number 37, a government motion.

Mr Fonseca: I move that subsection 17(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Restriction on agents

"(2) Except as permitted or required by or under a law and subject to the exceptions and additional requirements, if any, that are prescribed, an agent of a health information custodian shall not collect, use, disclose, retain or dispose of personal health information on the custodian's behalf unless the custodian permits the agent to do so in accordance with subsection (1)."

The Chair: Questions or comments? If none, in favour of the amendment? Against, if any? None. The amendment is carried.

Amendment number 38, a government motion.

Mr Fonseca: I move that section 17 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Responsibility of agent

"(3) An agent of a health information custodian shall notify the custodian at the first reasonable opportunity if personal health information handled by the agent on behalf of the custodian is stolen, lost or accessed by unauthorized persons."

The Chair: Questions or comments? None. Shall amendment number 38 carry? In favour? Against, if any? None. Amendment number 38 is carried.

Shall section 17 of schedule A, as amended, carry? In favour? Against, if any? Carried.

Section 18: You will notice that you have received an additional amendment by the government, so we'll move on to PC motion number 39.

Mrs Witmer: In light of the discussion on managing of information, I would withdraw this motion.

The Chair: The motion has been withdrawn by Mrs Witmer. We'll move on to motion 39.1, a government motion. You've just received this one.

Mr Fonseca: I move that section 18 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Same

"(3.1) Subsection (3) does not apply to,

"(a) a disclosure pursuant to an implied consent described in subsection 20(4); or

"(b) a prescribed type of disclosure that does not include information about an individual's state of health."

The Chair: Questions or comments?

Mrs Witmer: Could you just explain what this is going to be doing?

Mr Orr: This relates to the amendment which is proposed to allow disclosures for the purpose of providing information to religious organizations for the purposes of visiting. Right now, in subsection 18(3) there is a restriction which says that a consent to a disclosure must be express and not implied in certain circumstances, for instance where the health information custodian is making a disclosure to a person who is not a health information custodian. This would normally prevent those kinds of implied disclosures from applying to disclosures to outside religious representatives. So in order to make that other amendment work and to say that you can go by an implied consent for giving information to a religious organization, you need to make the exception here, and that really relates to clause (a); and at the same time there's an addition of clause (b), which allows other unforeseen types of disclosures with implied consent to be allowed, but it's restricted. It's only where it doesn't include health-related information about the individual. So it's where it's name and contact information, that kind of thing.

The Chair: Other questions or comments?

Mrs Witmer: That's fine. Thank you.

The Chair: If none, in favour of amendment number 39.1, a government motion? Against, if any? None. It is carried.

Amendment number 40, a government motion.

Mr Fonseca: I move subsection 18(6) of the Personal Health Information Act, 2003 be amended by striking out "under another act."

The Chair: Questions or comments? If none, in favour of the amendment? Against, if any? None. The motion is carried.

Shall section 18 of schedule A, as amended, carry? Against, if any? None. It is carried.

Section 19: amendment number 41, a government motion.

Mr Fonseca: I move that section 19 of the Personal Health Information Act, 2003 be amended by adding after "to the health information custodian" "but the withdrawal of the consent shall not have retroactive effect."

The Chair: Questions or comments? If none, in favour of the amendment? Against, if any? None. It is carried.

Amendment number 42, a government motion.

Mr Fonseca: I move that section 19 of the Personal Health Information Act, 2003 be amended by adding the following subsection:

"Conditional consent

"(2) If an individual places a condition on his or her consent to have a health information custodian collect, use or disclose personal health information about the individual, the condition is not effective to the extent that it purports to prohibit or restrict any recording of personal health information by a health information custodian that is required by law or by established standards of professional practice or institutional practice."

The Chair: Questions or comments? If none, shall amendment number 42 carry? Against, if any? Seeing none, it is carried.

Shall section 19 of schedule A, as amended, carry? Against? None. Carried.

You have received another one, section 20, a government motion.

Mr Fonseca: I move that section 20 of the Personal Health Information Act, 2003 be amended by adding the following subsection:

"Implied consent, religious or other organization

"(4) If an individual who is a resident or patient in a facility that is a health information custodian provides to the custodian information about his or her religious or other organizational affiliation, the facility may assume that it has the individual's implied consent to provide his or her name and location in the facility to a representative of the religious or other organization, where the custodian has offered the individual the opportunity to withhold or withdraw the consent and the individual has not done so."

The Chair: Questions or comments? I don't see any. In favour of the amendment? Against, if any? Seeing none, it is carried.

Shall section 20 of schedule A, as amended, carry? In favour? Against, if any? Seeing none, carried as amended.

On section 21 I have no amendments. Shall section 21 of schedule A carry? Against, if any? I see none. Carried.

Section 22: a government motion.

Mr Fonseca: I move that section 22 of the Personal Health Information Act, 2003 be amended by adding the following subsection:

"Requirements and restrictions on determination of incapacity

"22 (0.1) A health information custodian that determines the incapacity of an individual to consent to the collection, use or disclosure of personal health information under this act shall do so in accordance with any requirements and restrictions, if any, that are prescribed."

1130

The Chair: Questions or comments? I see none. All in favour of the amendment? Against, if any? I see none. Carried.

Amendment 44, government motion.

Mr Fonseca: I move that the English version of subsection 22(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Determination of incapacity

"(1) If it is reasonable in the circumstances, a health information custodian shall provide, to an individual determined incapable of consenting to the collection, use or disclosure of his or her personal health information by the custodian, information about the consequences of the determination of incapacity."

The Chair: Questions or comments? I see none. All in favour of amendment 44? Against, if any? I see none. Carried.

Shall section 22 of schedule A carry, as amended? All in favour? Against, if any? I see none. Carried, as amended.

Section 23: amendment 45, a government motion.

Mr Fonseca: I move that paragraph 1 of subsection 23(1) of the Personal Health Information Protection Act, 2003 be amended by striking out "in writing."

The Chair: Questions or comments? I see none. All in favour of the amendment? Against, if any? I see none. Carried.

Shall section 23, as amended, carry? In favour? Against, if any? I see none. Carried, as amended.

Section 24: Shall section 24 carry? In favour? Against, if any? I see none. Carried.

Section 25: I have an NDP motion.

Ms Martel: I had proposed this motion based on a presentation we heard from Baycrest, a long-term-care facility. I'm advised by ministry staff that they haven't had a chance to discuss this yet with the Public Guardian and Trustee, so we can't agree to anything in this regard at this point. I take it they are going to go back and have that discussion and, if an amendment is required, it's going to come forward at another time. I will withdraw it for the moment so they can have that discussion.

The Chair: Amendment 46 has been withdrawn for the moment by the NDP.

Seeing no other amendments, shall section 25 of schedule A carry? Against, if any? I see none. Carried.

Shall section 26 carry? Against, if any? I see none. Carried.

Shall section 27 carry? Against, if any? I see none. Carried.

Shall section 28 carry? Oh, sorry, I have an amendment. It's a government motion, amendment 47.

Mr Fonseca: I move that section 28 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Requirement for consent

"28. A health information custodian shall not collect, use or disclose personal health information about an individual unless,

"(a) it has the individual's consent under this act and the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose; or

"(b) the collection, use or disclosure, as the case may be, is permitted or required by this act."

The Chair: Questions or comments? I see none. All in favour of the amendment? Against, if any? Carried.

Shall section 28 of schedule A, as amended, carry? Against? I see none. Carried, as amended.

Section 29: There are no amendments. Shall section 29 of schedule A carry? All in favour? Against? I see none. Carried.

Shall section 30 of schedule A carry? I see none against. Carried.

I'm up to section 31, amendment 48. It's an NDP motion.

Ms Martel: The purpose of putting forward the motion was to deal with the serious concerns we heard about fundraising through the course of the hearings, and I'm pleased that the government has responded and the government members won their battle with the minister Friday morning. Congratulations. I will withdraw my amendment because the government is going to fix this.

The Chair: The motion has been withdrawn.

We'll move on to PC motion 49.

Mrs Witmer: I guess this probably was the one issue that came up everywhere throughout the province, and that was the emphasis on the need to allow, particularly hospitals I guess, to continue with their fundraising activities, simply because there are not public government dollars available. We know that many of the capital projects and many of the additional services required to support patients only happen because of the ability of the hospital foundations to raise funds. I hope, when the government explains their motion, that it will adequately deal with the concerns that we had. So I will withdraw our motion.

The Chair: Motion 49 has been withdrawn by Ms Witmer.

We'll move on to amendment 50. It's a government motion.

Mr Fonseca: I move that section 31 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Fundraising

"31(1) Subject to subsection (2), a health information custodian may collect, use or disclose personal health information about an individual for the purpose of fundraising activities only where,

"(a) the individual expressly consents; or

"(b) the individual consents by way of an implied consent and the information consists only of the individual's name and the prescribed types of contact information.

"Requirements and restrictions

"(2) The manner in which consent is obtained under subsection (1) and the resulting collection, use or disclosure of personal health information for the purpose of fundraising activities shall comply with the requirements and restrictions that are prescribed, if any."

The Chair: Questions or comments? I see none. All in favour of the amendment? Against, if any? I see none. Carried.

Shall section 31 of schedule A carry, as amended? Against? I see none. Carried, as amended.

Section 32: We have no amendments. Shall section 32 of schedule A—

Ms Martel: My apologies, Mr Chair. Sorry about this. If I can just go back to the fundraising, I'm assuming that some groups saw the proposed language and are comfortable with it. Can I make that assumption or do you have to take your language back now and—sorry about that.

Ms Appathurai: We do have to take the language back but we're fairly comfortable with it because we had in the past, on Bill 159 and also on the MCBS draft, spoken with the Association for Healthcare Philanthropy, and from our discussions there, I would assume that they would be comfortable. But as I said, we have to go forward and discuss it in detail with them.

1140

The Chair: Is that satisfactory?

Ms Martel: Thank you.

The Chair: Now, shall section 32 of schedule A carry? In favour? Against, if any? Seeing none, carried.

Section 33: We have amendment 51. It's a PC motion.

Mrs Witmer: Mr Chair, in light of the discussion, I would withdraw that amendment.

The Chair: Thank you.

Shall section 33 carry? In favour? Against, if any? Carried.

Section 34: There is no amendment. Shall section 34, schedule A, carry? Against? Carried.

Section 35: We have two amendments. Government motion 52.

Mr Fonseca: I move that clause 35(f) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(f) subject to the requirements and restrictions, if any, that are prescribed, the health information custodian is permitted under this or any other act or under an act of Canada to collect the information in a manner other than directly from the individual."

The Chair: Questions or comments? If none, in favour of the amendment? Against, if any? Carried.

Now amendment 53, a government motion.

Mr Fonseca: I move that section 35 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Direct collection without consent

(2) A health information custodian may collect personal health information about an individual directly from the individual, even if the individual is incapable of consenting, if the collection is reasonably necessary for the provision of health care and it is not reasonably possible to obtain consent in a timely manner."

Mrs Witmer: I have a little question here about "even if the individual is incapable of consenting." Could you explain what type of circumstances might arise that would necessitate this amendment?

Ms Perun: With respect to the indirect collections, we've already built in a provision that would allow a provider to collect, say, from a relative who comes in with the incapable individual. But there will be cases or situations where there is no one with the incapable individual. Still, the provider should be in the position of obtaining general basic information from the individual: What's your name? How are you feeling? What's your problem? Without this amendment, there was really no such ability built into section 35. Therefore, this proposed amendment enables the provider to collect information also from the incapable person if they show up with no one.

The Chair: Satisfactory?

Mrs Witmer: Thank you.

The Chair: Any other questions or comments? If none, shall amendment 53 carry? Against, if any? I see none. Carried.

Shall section 35 of schedule A, as amended, carry? Against? I see none. Carried, as amended.

Section 36: amendment 54. It's a PC motion.

Mrs Witmer: Yes, in light of earlier discussions, I would withdraw this amendment

The Chair: Amendment 54 has been withdrawn by Mrs Witmer.

We've move on to amendment 55. It's a government motion.

Mr Fonseca: I move that clauses 36(1)(f) and (h) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(f) in a manner consistent with part II of this act, for the purpose of disposing of the information or modifying the information in order to conceal the identity of the individual;

"(f.1) for the purpose of seeking the individual's consent, when the personal health information used by the custodian for this purpose is limited to the individual's name and contact information;

"(h) for the purpose of obtaining payment or processing, monitoring, verifying or reimbursing claims for payment for the provision of health care or related goods and services."

The Chair: Questions or comments? I see none.

Those in favour of the amendment? Against? I see none. It is carried.

Amendment 56 is a PC motion.

Mrs Witmer: Again, in light of earlier discussions, I would withdraw that amendment.

The Chair: So 56 has been withdrawn by Ms Witmer.

Shall section 36, as amended, be carried? Against? I see none. It is carried, as amended.

Section 37: amendment 57, a PC motion.

Mrs Witmer: Again, in light of earlier discussions, I would withdraw that.

The Chair: So 57 has been withdrawn by Ms Witmer.

I'll move on to 58, an NDP motion.

Ms Martel: Before we get there, may I ask a question? This has to do—I think both the ones we were just dealing with—with issues around the lockbox provisions, which I think we have struggled with, and we've heard some various opinions. Can you tell us—because I gather that other jurisdictions have provisions and, I guess, to give me some comfort—about what is happening elsewhere that would just allow us to continue with what we have in place?

Ms Appathurai: Manitoba has a lockbox very similar to ours. We have been calling various people in Manitoba to see whether in fact there was a problem with this provision, whether there were concerns raised by either the medical community or patients, any other stakeholders. What we have found is that this has just been a non-issue for individuals in Manitoba for stakeholders and for the public. This worked very well. It's not an issue. They're looking at reviewing their legislation now. I had asked the question in the review of legislation if this had been an issue, and they have said to us no, it's not.

Ms Martel: Can I just ask further to that, because there was certainly the more philosophical issue about whether it impeded quality of care. We had some very specific concerns raised by the Group Health Centre in Sault Ste Marie on a more technical level in terms of their technology. Has that been as issue with any of the provider groups?

Ms Appathurai: The answer to that is no. Certainly it has not been raised in Manitoba, where they have this similar provision. In Alberta, there was a requirement for consent for electronic transfer of information, and that has been withdrawn. The legislation has been amended to remove that requirement. The explanation that was given is that fewer than 1% of individuals used it. It was not a big issue, and they didn't feel that there was a need for it.

In terms of the implications for cost in Ontario, we've consulted with some technicians in that area who have told us that masking information is not expensive at all, indicating that there's a flag that's not expensive at all. I remember the suggestion that was raised was that some aspects of information should be able to be locked and others not. The individuals whom we have spoken to initially on this have said from a technological point of view, they don't see it as very difficult nor expensive, that you can buy a software program to do this.

In terms of implications for health care, we have to remember that currently in Ontario, if you go to your doctor and say, "I do not want this bit of information

being forwarded to this specialist, who happens to be related to me," that is a situation that you and your doctor have to discuss. It's a discussion that takes place currently. I assume that, as in Manitoba, those same discussions will take place.

1150

The Chair: Thank you, Carol.

We'll move on to amendment number 58. It's an NDP motion.

Ms Martel: This was put in in the first place to try and deal with some of the concerns raised by faith communities. I trust those concerns will be dealt with in the changes that the government is proposing, so I'll withdraw the motion.

The Chair: Motion 58 has been withdrawn by Ms Martel. We'll move on to 59. It's a PC motion.

Mrs Witmer: Before I speak to this motion, I wonder if the government representatives can tell me whether or not the concerns that have been identified by stakeholders and the amendment we proposed have been addressed.

The Chair: Can someone from the staff clarify?

Ms Perun: In the government motions there is no specific motion that addresses this issue as has been put forward by this PC motion. With respect to disclosure without consent for the purposes of infection control procedures, there are currently provisions in the bill that allow disclosure to the chief medical officer of health if permitted under the Health Protection and Promotion Act.

Also, if there were requirements to provide patient information to an employer as required under the Occupational Health and Safety Act, that requirement is not affected by this bill.

Finally, with respect to general disclosure, if there's a concern that somehow there would be harm to someone else or to the individual, there is already, in the draft of Bill 31, 39(1), which speaks to enabling a custodian to disclose if there are reasonable grounds to believe the disclosure is necessary for the purpose of eliminating or reducing significant risk of serious bodily harm to a person or group of persons. So there is no specific new motion dealing with this issue, but there are provisions in the bill that do address certain concerns that were raised by these provisions.

Mrs Witmer: Is there anything here that is not covered?

Ms Perun: With respect to clauses (a) and (b), the express instruction, we could prescribe in regulation that express instruction must be in writing, but right now express instruction could be oral or written. Second, as to when it is provided is not specifically addressed. That would be clause (b).

Mrs Witmer: I will withdraw that amendment, then.

The Chair: Thank you, Halyna. Thank you, Ms Witmer. So amendment number 59 has been withdrawn.

We'll move on to amendment number 60. It's a government motion.

Ms Martel: My apologies, because I think you're moving to section 37(4). I wanted to raise an issue above that. This has to do with the facility that provides health care, because I continue to struggle with some of the concerns we heard, particularly from the Canadian Mental Health Association, that the mere disclosure of a particular wing in a hospital would give you some medical information about that patient that you might not get anywhere else. I've had an initial discussion with counsel about this, and I just want to raise it again. I believe it was in the Canadian Mental Health Association's presentation—I could be wrong, so if I'm wrong, I apologize—but there certainly was a suggestion that perhaps you could limit this further to state that the disclosure would only happen if the patient was severely injured or if their life was at risk, and second, that the health care custodian would try and contact a substitute decision-maker if the patient was incapable of consenting.

I understand that this is a permissive section, that the hospital or institution does not have to disclose information. However, I guess I'd rather be in a position where if they are disclosing in a permissive nature we are restricting what they're disclosing to those kinds of circumstances.

I'd like to ask the government to consider this again. There's obviously not a motion before us, so it wasn't your intention to make any change, but I'd appreciate if we could have another run at this to see what would be permitted and if we could move forward with more of a limitation that would say that the disclosure may still happen, but only in the instance where someone is severely ill, their life is at risk and efforts are also therefore made to contact a substitute decision-maker, if one exists, in the case of someone presenting with mental health illness.

The Chair: Thank you. We'll move on to amendment number 60. It is a government motion.

Mr Fonseca: I move that clause 37(4)(b) of the Personal Health Information Protection Act, 2003 be amended by adding after "to be deceased" "and the circumstances of death, where appropriate."

The Chair: Questions or comments? If none, shall the amendment carry? In favour? Against? I see none against, so it is carried as presented.

Amendment number 61 is a government motion.

Mr Fonseca: I move that clause 37(4)(c) of the Personal Health Information Protection Act, 2003 be amended by striking out "having regard to any views that the individual previously expressed that are known to the custodian" at the end.

The Chair: Questions or comments? I see none. Those in favour of the amendment? Against, if any? I see none. Carried.

Shall section 37 of schedule A, as amended, carry? Against? I see none. Carried as amended.

It being two minutes before 12 o'clock, I think we should adjourn and be back for 1 o'clock sharp.

The committee recessed from 1156 to 1301.

The Chair: We'll resume immediately. We're up to motion number 62. It's a government motion, section 38.

Mr Fonseca: I move that clauses 38(1)(a) and (c) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(a) for the purpose of determining or verifying the eligibility of the individual to receive health care or related goods, services or benefits provided under an act of Ontario or Canada and funded in whole or in part by the government of Ontario or Canada or by a municipality;" ...

"(c) to a prescribed person who compiles or maintains a registry of personal health information for purposes of facilitating or improving the provision of health care or that relates to the storage or donation of body parts or bodily substances."

The Chair: Questions or comments? None. Those in favour? Against, if any? The motion is carried.

Now we'll move on to motion number 63. It's an NDP motion.

Ms Martel: In order to respond to concerns by Cancer Care Ontario, the Ontario Joint Replacement Registry and the Cardiac Care Network, I move the next three amendments so that they would be clearly outlined in the bill in the section under registries. The government is going to correct me if I'm wrong. You are going to continue to work with them and try to do this by regulation, I gather. Can you just tell me why you want it in regulation versus being part of the actual bill, so that they are specifically referenced.

The Chair: Carol?

Ms Appathurai: Cancer Care Ontario is an organization that has been in flux and may continue to be in flux. Putting them in the regs rather than carving them in stone in the legislation gives us the flexibility to adapt to changing needs. In terms of the Ontario Joint Replacement Registry, that is not an entity unto itself and therefore it would not really be appropriate to list it in the legislation. The Cardiac Care Network is a registry rather than a health information custodian. It does not provide health care. It's more appropriately listed as a registry through the regulations. In sum, the regulations give us the flexibility to respond to the changing nature of the organizations and to list those which are more appropriately listed as a registry rather than a health care custodian.

Ms Martel: Based on that, and the ongoing discussions that are going to occur with all of those groups, I would withdraw those three motions that refer to those three groups.

The Chair: So motions 63, 64 and 65 have been withdrawn by Ms Martel.

We'll move on to motion number 66. It's a PC motion.

Mrs Witmer: That was to address some of the concerns of the *[inaudible]*. So I'm going to withdraw that.

The Chair: Motion number 66 has been withdrawn by Mrs Witmer.

Shall section 38, as amended, carry? In favour? Against? I see none, so section 38, schedule A is carried, as amended.

Motion 67 under section 39, a PC motion.

Mrs Witmer: In light of discussions, I'm going to withdraw that motion.

The Chair: Motion 67 has been withdrawn by Mrs Witmer. We'll move on to motion 68.

Mrs Witmer: Regarding motion 68, there were some concerns expressed here about disclosure, so we had a recommendation here that would move that subsection 39(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted—the government also has a motion, but what I don't know at this point in time is if the government motion there would take into consideration the concerns we've highlighted.

Ms Perun: No.

Mrs Witmer: It wouldn't. OK.

"Disclosures related to care or custody

"(2) A health information custodian may disclose personal health information about an individual to the head of a penal or other custodial institution in which the individual is being lawfully detained upon the request of the institution or facility or to the officer in charge of a psychiatric facility within the meaning of the Mental Health Act in which the individual is being lawfully detained, to assist the institution or the facility in making a decision concerning the placement of the individual into custody, detention, release, conditional release, discharge or conditional discharge under part IV of the Child and Family Services Act, the Mental Health Act, the Ministry of Correctional Services Act, the Corrections and Conditional Release Act (Canada), part XX.1 of the Criminal Code (Canada) or the Youth Criminal Justice Act (Canada).

"Criteria for making disclosure

"(3) A health information custodian is not required to make a disclosure under subsection (2) unless the requesting party indicates to the health information custodian,

"(a) the decision that is being contemplated;

"(b) the nature of the information that is necessary for the decision;

"(c) the reason why the information is necessary; and

"(d) how the information will be used or disclosed in making the decision concerning placement."

The Chair: Questions or comments on the amendment?

Mr Fonseca: It's already limited by section 29, the general limiting principle.

The Chair: Other comments?

Ms Martel: Sorry, I don't understand that. Can I have some clarification, please?

1310

Ms Perun: With respect to subsection 39(3), the new part is "Criteria for making disclosure." There are two points to be made here. With respect to the first line, "A health information custodian is not required to make a

disclosure ... unless," subsection 39(2) is merely permissive, so there is no requirement in the first instance.

As far as how the custodian exercises his or her discretion to disclose this information, that exercise of discretion generally is governed by the rule set out in section 29 of the legislation, which is the general limiting principle that speaks to all custodians when making decisions around collection, use and disclosure of personal health information. In other words, section 29 provides that "A health information custodian shall not collect, use or disclose personal health information if other information will serve the purpose," for starters; and, secondly, shall only disclose, collect or use that amount of personal health information that is reasonably necessary to meet the requirement.

In other words, the criteria in subsection 39(3) in a sense apply to all disclosures without consent. In terms of permissible disclosures without consent, they're all subject to section 29, that limit on not disclosing more than you have to and not disclosing PHI when other information will serve the purpose. That's one thing.

Mr Orr: As Halyna pointed out, subsection 39(2) is a "may." It says, "A health information custodian may disclose." So if we have language in subsection 39(3) that says, "A health information custodian is not required to make a disclosure under subsection (2) unless the requesting party indicates" and it lists a number of things, the implication may be that if indeed all those items are provided, then it is a required disclosure, because it says, "is not required ... unless," so presumably, if you meet all the criteria following, then it becomes a required disclosure. I don't believe it was the intention here to turn this into a required disclosure.

The Chair: Other comments or questions? If none, we will proceed with the vote. All those in favour of Ms Witmer's amendment, please raise your hands. One, two. All those against? One, two, three, four, five, six; abstain.

Ms Martel: It probably would have made some sense to operate with the next one, which is almost the same, so that I could clearly understand what the differences are.

The Chair: This motion was defeated, though.

Mrs Witmer: That's why I wanted to know how this compared to the government motion.

The Chair: Motion number 68 was defeated.

We'll move on to motion 69. It's a government motion.

Mr Fonseca: I move that subsection 39(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Disclosures related to care or custody

"(2) A health information custodian may disclose personal health information about an individual to the head of a penal or other custodial institution in which the individual is being lawfully detained or to the officer in charge of a psychiatric facility within the meaning of the Mental Health Act in which the individual is being lawfully detained for the purposes described in subsection (3).

"Same

"(3) A health information custodian may disclose personal health information about an individual under subsection (2) to assist an institution or a facility in making a decision concerning,

"(a) arrangements for the provision of health care to the individual; or

"(b) the placement of the individual into custody, detention, release, conditional release, discharge or conditional discharge under part IV of the Child and Family Services Act, the Mental Health Act, the Ministry of Correctional Services Act, the Corrections and Conditional Release Act (Canada), part XX.1 of the Criminal Code (Canada), the Prisons and Reformatories Act (Canada) or the Youth Criminal Justice Act (Canada)."

The Chair: Questions or comments?

Ms Martel: I still don't understand why some of this information might be required. I can understand based on the presentation we heard from the Canadian Mental Health Association, Elgin that they—not a young offenders facility but they, as a community-based agency—might need to have some information in order to determine placement of their services. What I still don't clearly understand is, I guess, (b). If you're not talking about a health care need for the client, why is that information necessary for placement purposes? If there is not a health problem in front of us, why do all the groups need to know that?

Ms Appathurai: I can certainly speak to the concerns of the Ministry of Correctional Services. They believe that they need to know that information because they have a responsibility for the inmate, that some of the health concerns of the inmate may impact on either staff or other prisoners, and therefore it's important for them as the organization that's responsible for the care of this individual inmate and all the inmates to have that information. This section allows the doctor the discretion to determine what information should be disclosed to the institution.

Ms Martel: But in this case we're not questioning—except perhaps for someone who is being detained in a mental health facility, there's not a determination that people can't provide that consent on their own, correct? So they're not even being asked for their consent, and it looks like the reason is that they're being detained. So they lose some rights under law that other people would normally have. Am I correct? Do you know where I'm going with this?

Ms Appathurai: Yes. This is the subject of much discussion and debate. If the legislation had made it a requirement of disclosure, the individual would have lost all their rights, but in this situation the individual is still able to tell the doctor, "Please do not disclose this information."

Ms Martel: And yet my concern would be that we heard in presentations that this may well be a more common than uncommon practice. If the practice is that the information is being released, regardless of whether or not consent has been declined, isn't that something we should be worried about and trying to remedy?

Mr Orr: Before answering your question I'd just like to place this in the context that this is an amendment being proposed to a portion of the bill. The two changes from what's there in the bill are adding clause (a) and then adding the Prisons and Reformatories Act. So the permitted disclosure with respect to the placement of the individuals into custody, detention, release, conditional release etc is there in the bill already, and in fact, that's been there in drafts of privacy legislation, in Bill 159 and a number of bills.

You asked about what's the difference between somebody inside one of these institutions and why shouldn't they have the rights of somebody outside. They still have control over the collection, use and disclosure of their personal information for the purposes of providing health care. These provisions speak to ancillary purposes, speak to the fact that this person is in a facility. They are not there voluntarily. They're there and the facility, as a result, must take responsibility for making the services they need available to them. In the actual delivery of those services the person is going to have to provide consent in a similar way that they would on the outside.

1320

This provision recognizes—and I think we've really made a balance here, because it could have been a much more open provision also. It gives the ability for the information to be provided that's necessary for the purpose of the provision of health care to the individual, the logistical arrangements that are necessary, and for the placement of the individual inside the custody that recognizes that people with certain health care needs or conditions may need to be placed in a certain placement in the institution; for instance, in a placement where the services they require will be available to them. In terms of actually connecting with those services and providing those services, that is something that will involve the person's consent, but in terms of placing them where those services will be available to them, it's very important that the institution have the information to do that.

Ms Martel: I would understand that if it was clear that they needed the services, and then I would agree with your subsection (a) that there is a need for health care to be delivered or to be received. The information would clearly have to be disclosed. The clients themselves would understand that because they need health care. It's in the situation where it's not evident that there is health care of any nature that is required, and yet a health care custodian may release information about someone's health status—even though health care is not required. It just seems to me, as I read it, that we're allowing that to happen because the individual in question is incarcerated in some form. We wouldn't make that requirement for a member of the general public who's not being incarcerated. That's the difficulty I have. It's not a new difficulty, because I didn't agree with it as it's been presented in the bill from the start. I have tried to raise questions around it. I like your clause (a); (b) still gives me no comfort because it's essentially as we have in the bill, and I have not agreed with that provision from the start. I appreciate your trying to explain this to me, but I think I still am nervous about where it takes us.

Mr Orr: I would just add one more point, and that is just to refer to the general limiting principles in section 29. Those need to be read in conjunction with all the permitted collections, uses or disclosures. So it's only the amount of information that is necessary for that purpose. That provides a significant limitation.

Ms Martel: I understand that. My concern is—if I may, and then I'll conclude—for some of these individuals, that disclosure, if it does happen, puts them in a much more precarious situation than someone in the general public who's not incarcerated. If you're in jail and a health care custodian discloses to the head of that institution that you're HIV-positive, I think that puts you, as an individual, in a much more precarious situation than other inmates. Maybe there isn't a way to get around it, but I don't think I can agree with this. I just think there has to be a way that there is some protection. Yes, if that person needed treatment immediately, I could understand that. But a disclosure of that nature for no reason related to health care could be really damaging.

Ms Perun: Just to add to this, with respect to the placement of the individual into custody, or release or conditional release, the other thing we've heard is that currently, for example, where the person has offended and is now considered for release into the community, has served their time but has undergone some therapy or participated in a program, the decision-makers who actually are making the decision to release the person into the community need to know that information. They would need to know that whether or not the person has consented. That is effectively what we have heard. Therefore, in that instance, that is the kind of information that is contemplated in clause (b) for the placement of the individual. Even to be discharged into the community, there has to be some kind of check and balance that, yes, the person has served their time, they have undergone a certain program, whatever it may be, and they're ready to go out into the community. That's also one of the purposes of clause (b).

The Chair: Is that satisfactory? Any other comments or questions? If none, those in favour of amendment number 69, a government motion, raise your hand? Against? One against. It is carried.

Shall section 39 of schedule A, as amended, carry? Against? One against. Carried.

We'll go on to amendment number 70 under section 40, a government motion.

Mr Fonseca: I move that clause 40(a) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(a) for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to a matter in issue in the proceeding or contemplated proceeding;"

The Chair: Questions or comments?

Ms Perun: There's just a clarification. The motion actually reads "possible proceeding," but there is an error. The first line is "contemplated proceeding," and so "possible proceeding" should have been "contemplated proceeding."

The Chair: Thank you. Other comments or clarification? If none, all those in favour of the amendment? Against, if any? It is carried.

Amendment 71, government motion.

Mr Fonseca: I move that section 40 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Disclosure by agent or former agent

"(2) An agent or former agent who receives personal health information under subsection (1) or under subsection 36(2) for purposes of a proceeding or contemplated proceeding may disclose the information to the agent's or former agent's professional adviser for the purpose of providing advice or representation to the agent or former agent, if the adviser is under a professional duty of confidentiality."

The Chair: Questions or comments on amendment 71? If none, those in favour, please? Against, if any? Carried.

Shall section 40 of schedule A carry, as amended? Against, if any? It is carried.

Section 41: amendment 72, government motion.

Mr Fonseca: I move that section 41 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Transfer of records

"41(1) A health information custodian may transfer records of personal health information about an individual to the custodian's successor if the custodian makes reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

"Same

"(2) In the prescribed circumstances, a health information custodian may transfer records of personal health information about an individual to the Archives of Ontario or to a prescribed person whose functions include the collection and preservation of records of historical or archival importance, if the disclosure is made for the purpose of that function."

The Chair: Questions or comments? If none, those in favour of the amendment, please? Against, if any? It is carried.

Shall section 41, as amended, carry? Against? It is carried?

Section 42: amendment number 73, an NDP motion.

Ms Martel: I moved this particular motion to respond to the concerns that the Ombudsman raised in his presentation, particularly about the potential of having information blocked to him when he was trying to have investigations undergone, the need to get express consent. I understand from ministry staff that that issue is going to be dealt with in a government motion that's coming by a change to the Ombudsman Act itself to make that clear. So I will withdraw that amendment.

The Chair: Motion number 73 has been withdrawn.

I'll move to amendment 74, a government motion.

1330

Mr Fonseca: I move that clause 42(1)(g) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(g) subject to the requirements and restrictions, if any, that are prescribed, to a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant or by or under this act or any other act of Ontario or an act of Canada for the purpose of complying with the warrant or for the purpose of facilitating the inspection, investigation or similar procedure;"

The Chair: Questions or comments? I see none. Those in favour of the amendment? Against, if any? I see none. It is carried.

Shall section 42, as amended, carry? All in favour? Against? It is carried.

Section 42.1: motion 75, a PC motion.

Mrs Witmer: This again refers back to chaplains and that issue has been addressed, so I will withdraw it.

The Chair: So amendment number 75 has been withdrawn by Ms Witmer.

We'll move on to section 43, amendment number 75, a PC motion.

Mrs Witmer: I move that subsections 43(12), (13) and (14) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Transition

"(12) Despite anything in this section, a health information custodian that lawfully disclosed personal health information to a researcher for the purpose of conducting research in the five-year period before the day this section comes into force may continue to disclose personal health information to the researcher for the purposes of that research for a period of five years after the day this section comes into force.

"Same, use

"(13) Despite anything in this section, a health information custodian that lawfully used personal health information for the purpose of conducting research in the five-year period before the day this section comes into force may continue to use personal health information for the purposes of that research for a period of five years after the day this section comes into force.

"Repeal

"(14) Subsections (12) and (13) are repealed on the fifth anniversary of the day they come into force."

This really was dealing with that transition period. As you know, there was a request from the teaching hospitals, and also Baycrest indicated an interest here. The fact is that many of these research projects take and are five years in length, as they do not just do the research project but they do their clinical trials. If we don't have this five-year period, there may be a need for some of these clinical trials and some of the research projects to be stopped or have to undergo extensive revision if we

don't increase the number of years of transition to five years.

The Chair: Questions or comments?

Mr Fonseca: We feel that five years is too long and that two years would be a good compromise.

The Chair: Other comments or questions?

Mrs Witmer: Again, if people take a look at research projects that are done by the medical community, particularly the teaching hospitals, you'll see that—if you don't feel you can support the five years, I think we at least have to take a look at three years. Otherwise some of this research, which people are conducting basically to help you and me and others have a better quality of life, and new tests for drugs and services and programs—they're going to have to be stopped, and unfortunately there's going to be a lot of time and money wasted if people are not allowed to proceed. It certainly can have an impact on the quality of life of some individuals who may be impacted by that short time period of only two years.

The Chair: Other comments?

Ms Perun: With respect to the research stopping, I think the important thing to note too is that the transition period contemplates that the researcher would, first of all, need to make sure they have a research ethics board approval for the research. So the research can still go on, even at that time, provided they have research ethics board approval and that the agreement they enter into with the custodian reflects the requirements in this legislation. Basically, it would just allow a time frame where the researcher could revisit the agreement that they already have in place or, if they don't have an agreement in place, to enter into it.

I don't think there's an idea that somehow research will stop. It's just that the requirements may have to be revisited: Did they get the research ethics board approval, and do they have a research agreement in place that is reflective of the language of the bill?

Mrs Witmer: If that's the case, why are you recommending two years? Why have you made a change, if you're assuming that things are OK as they are if they've taken the appropriate steps?

Ms Perun: It's basically just to give a little bit more flexibility in order to do the research agreement. Sometimes the research agreements that we enter into in the government take a bit longer than a year to finalize certain things. It gives a little bit more flexibility, but it's not as long as five years.

Mrs Witmer: I guess the fact that the government is prepared to change the time indicates that there is an acknowledgement that this can certainly create some problem and that there is a need for some flexibility. If we can't support five, I certainly would recommend three.

Ms Wynne: May I just ask a question? Is this one of the sections that we've talked with any outside people about, on whether—one, two, three, five?

Ms Perun: No.

The Chair: Thank you. Other comments or questions? If none, we'll vote on the PC amendment. In favour of the Mrs Witmer's amendment, please raise your hand. Three. Against? Six. The motion is defeated.

Number 77, a government motion.

Mr Fonseca: I move that subsections 43(12), (13) and (14) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Transition

"(12) Despite anything in this section, a health information custodian that lawfully disclosed personal health information to a researcher for the purpose of conducting research in the two-year period before the day this section comes into force may continue to disclose personal health information to the researcher for the purposes of that research for a period of two years after the day this section comes into force.

"Same, use

"(13) Despite anything in this section, a health information custodian that lawfully used personal health information for the purpose of conducting research in the two-year period before the day this section comes into force may continue to use personal health information for the purposes of that research for a period of two years after the day this section comes into force.

"Repeal

"(14) Subsections (12) and (13) are repealed on the second anniversary of the day they came into force."

The Chair: Questions and comments?

Mrs Witmer: I'd like to move an amendment to this motion that the two years become three years and that it be repealed on the third anniversary of the day.

The Chair: There's an amendment to this amendment moved by Mrs Witmer, that the period will be moved to three years instead of two years—

Clerk of the Committee: And it's repealed on the third anniversary.

The Chair: —and repealed on the third anniversary, yes. Questions or comments?

Ms Martel: If I might make a point on this, one of the other concerns we heard was whether or not, with some of these groups and institutions, there was an effective, legitimate research ethics board actually in place and operating. There are motions later on to define that in regulation. My concern would be, if there really isn't such a body in place and the government is going to move to establish some criteria that everybody has to live by, that process in itself is going to take some time. I know you want an open consultation process. I think there's a number of people you're going to have to talk to about that.

1340

I just think there will be some time and some delay that we should take into consideration, especially in the case where there really isn't a research ethics board that was functioning that someone might have to go back to to try to get some consent or try to change terms and conditions.

I guess I just leave that as a caution. I rather like moving to an additional year, just because we don't have anything concrete about research ethics boards: what they look like, how they're going to be constituted in places where they aren't. I think the government wants to have at least a base level to work from. That's going to take some time and then additionally it would take some time to get those into place.

The Chair: Any other comments on the sub-amendment?

Ms Wynne: I don't know if it helps at all, but I think the government is considering entertaining a motion to move to January 1 in terms of implementation. I don't know if that helps. It gives some more time. I just wanted to offer that up as a possible help.

Mrs Witmer: That isn't going to change the impact of this, I don't believe. I think it's important to remember that the timelines of many of the research agreements are three to five years. As far as clinical trials are concerned, they frequently run for three years. What we're trying to do is to give these projects that are underway at the passage of this legislation the provision of a longer grandparenting provision, and that it's not going to require more re-evaluation and time spent by someone.

The University Health Network raised this, the Centre for Addiction and Mental Health, the Ontario Council of Teaching Hospitals and the Ontario Hospital Association.

The Chair: Any other comments? If not, we will vote on the sub-amendment, the amendment to the amendment.

Ms Wynne, do you have a question?

Ms Wynne: I think three years is fine.

The Chair: So we'll vote on that.

Mr Albert Nigro: Before we vote—my name is Albert Nigro and I'm legislative counsel—I want to be clear on what you're voting on. In subsection 43(12), is it "three-year period" and "three years after the day"? The same question applies to subsection (13). In other words, there are two time periods in both those subsections. I want to know if both are changing to three years.

Ms Wynne: Yes. It would "three-year period before the day this section comes into force," and "for a period of three years after the day."

The Chair: So in subsection (13), the second-last line, "for a period of three years after the day this section comes into force." And "Repeal," subsection (14), "Subsections (12) and (13) are repealed on the third anniversary of the day they came into force."

We will vote—

Ms Wynne: So we're going to vote on Mrs Witmer's amendment of this amendment?

The Chair: That is right. Those in favour of the amendment to the amendment, please raise your hand. Unanimously supported.

Mr Fonseca: There are four different spots where "two years" comes up and that it would be changed to "three years."

The Chair: Are there other places?

Mrs Witmer: There are five spots.

The Chair: We will vote on the amendment, as amended. On amendment number 77, we will vote on the amendment to the amendment. In favour of the amendment, as amended? Carried.

Shall section 43 of schedule A, as amended, carry? In favour? Carried.

Section 43.1: amendment number 78, an NDP motion.

Ms Martel: I'm looking at the government motion that's coming next and I would say that CCO, in a number of the concerns raised, also, I thought, made a legitimate point that health information might be needed to be disclosed for planning and management. So included there were compiling statistics, carrying out research, etc.

As I run through the government amendment quickly, I'm hoping that part of that concern that they raised is now going to be dealt with in the next motion that's coming from the government. If not, you can tell me otherwise. But if it is, then I would withdraw the motion. So, Carol, if you wanted to speak to it first, that would be great.

The Chair: So Ms Martel is withdrawing this motion, number 78.

Ms Martel: If I could hear her explanation first, please, Chair, before I do that.

The Chair: Oh, you want to hear some explanation? Yes. Ministry staff?

Ms Appathurai: If you look at the government motion, you'll see that we are putting forward a provision that would allow us to prescribe an entity that has practices and procedures in place that are privacy-protected. This entity would be collecting information. We're giving permission to a health information custodian to disclose to this prescribed entity for the purposes of analysis or compiling statistical information, all that Cancer Care Ontario is requesting.

However, what we don't have there and what is in your amendment is the requirement. Cancer Care Ontario would like to require health information custodians to disclose. They're not making it permissive; they're requiring that disclosure.

Where a custodian refuses to comply, Cancer Care Ontario can make a complaint to the commissioner. This addresses the concern that Cancer Care Ontario has that health information custodians, hospitals, for example, for whatever their reasons, are on occasion reluctant to disclose information. Hospitals may have in that situation a very good reason for not disclosing. Custodians would find this required disclosure quite offensive, and more than that, it's also inconsistent with the privacy act.

A requirement for custodians to disclose to Cancer Care Ontario is more appropriately placed in the Cancer Act. At this time, the Cancer Act is permissive. If Cancer Care Ontario wants to require disclosures by health information custodians, an amendment to that act would serve that purpose.

Ms Martel: Is it the government's intention to bring that forward? Because as I listen to their argument, I found it difficult to understand where they would have a mechanism for appeal then, if a hospital decided not to

disclose information. You said there might be a good reason for that, and there may, except if there's not an independent appeal mechanism, neither party, I think, would feel satisfied about the lack of disclosure—certainly CCO, from its point of view—that it had some other authority it could appeal to, to either get the reason or to get that determination overturned. So I hear how that might be resolved, but I did not hear that the government is bringing an amendment forward to the Cancer Act to make that happen.

Ms Appathurai: To my knowledge, I'm not aware of any activity in that area, but I could certainly go back and get information on that.

Ms Martel: If that's not coming forward, I just need to know how we deal with what I thought—maybe I'm wrong, but I thought it was a legitimate concern that was being expressed by Cancer Care Ontario that this is what's happening to them now in practice. I'm not sure what reason a hospital would have; I'd be interested to know that, but it seems to me that is an outstanding issue that needs to be resolved, so if you could have another look at that.

I would withdraw the amendment, but I would say that I remain concerned about how we deal with that particular concern that was reflected by CCO to us.

Mr Chair, I withdraw the amendment.

The Chair: Very good. Thank you. The amendment has been withdrawn by Ms Martel.

We'll move on to the next one, amendment 79, a government motion.

1350

Mr Fonseca: I move that the Personal Health Information Protection Act, 2003 be amended by adding the following section:

"Disclosure for planning and management of health system

"43.1 (1) A health information custodian may disclose to a prescribed entity personal health information for the purpose of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of the allocation of resources to or planning for all or part of the health system, including the delivery of services, if the entity meets the requirements under subsection (3).

"Exception

"(2) Subsection (1) does not apply to,

"(a) notes of personal health information about an individual that are recorded by a health information custodian and that document the contents of conversations during a private counselling session or a group, joint or family counselling session; or

"(b) information that is prescribed.

"Approval of prescribed entity

"(3) A health information custodian may disclose personal health information to a prescribed entity under subsection (1), if the entity has in place practices and procedures to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information and the commissioner has approved those practices and procedures.

"Review by commissioner

"(4) The commissioner shall review the practices and procedures of each prescribed entity every two years from the date of its approval and advise the health information custodian whether the entity continues to meet the requirements of subsection (3).

"Duties of prescribed entity

"(5) Subject to any requirements or restrictions that are prescribed, if any, an entity that receives personal health information under subsection (1) shall not use or disclose the personal health information except for the purposes for which it received the personal health information."

The Chair: Questions or comments? I see none. Those in favour of the number 79 amendment? Against, if any? Seeing none, it is carried.

We'll move on to section 44. I see no amendment on this one. Shall section 44 of schedule A be carried? Against, if any? Seeing none, it is carried.

Section 45: Shall section 45 of schedule A carry?

Ms Martel: You have an amendment.

The Chair: Not on this one. There's a new section on the other one. Should it carry the way it is? There's no amendment.

Mrs Witmer: As is?

The Chair: As is, yes. Thank you.

Section 45.1.

Mrs Witmer: We've discussed this, and based on the information I've been provided with, I would withdraw this.

The Chair: So this has been withdrawn by Mrs Witmer.

We'll move on to section 46. Shall section 46 of schedule A carry? Against, if any? I don't see any. It is carried.

Section 47: amendment number 81, a government motion.

Mr Fonseca: I move that section 47 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Restrictions on recipients

"47(1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian, and to whom a health information custodian discloses personal health information, shall not use or disclose the information for any purpose other than the purpose for which the custodian was authorized to disclose the information under this act or as necessary in the course of carrying out a statutory or legal duty.

"Extent of use or disclosure

"(2) Subject to exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian, and to whom a health information custodian discloses personal health information, shall not use or disclose more of the information than is reasonably necessary to meet the purpose of the use or

disclosure, as the case may be, unless the use or disclosure is required under an act of Ontario or Canada.

"Freedom of information legislation

"(3) Except as prescribed, this section does not apply to an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act that is not a health information custodian."

The Chair: Are there any questions or comments?

Mrs Witmer: I guess there are some questions. If we take a look at how this might apply to the regulated health colleges and we take a look at the wording "except as permitted or required by law" in subsection 47(1), and then we take a look at the last line, "as necessary," and then we take a look how this information can be used or disclosed, the interpretation might well be—the question I would ask you is, if, for example, a hospital were going to terminate the employment of a physician, according to the letter of the law, does this mean that the only information they would be required to give to a college would be that the physician has been terminated, or does this also require that they would report to the college that this physician has been terminated because of, for example, a problem with addiction or sexual abuse? When we talk about the use of the information, does this section allow the registrar, who would become the owner of this information—what can he or she do with the information? So I guess there are some questions here as to how this might or might not impact on the colleges.

Ms Perun: For starters, this provision has also been reviewed by the Federation of Health Regulatory Colleges of Ontario. To be frank, I think that their preference would have been to have a complete carve-out for regulated health colleges. But in terms of the language and the fact that in subsection 47(1) a custodian may disclose, and then the recipient may use the information received as necessary in the course of carrying out a statutory or legal duty, that in fact is intended to capture the regulated health colleges' work in its entirety. If they receive the information, they can certainly use it for the purpose of carrying out a statutory or legal duty.

The reason why we didn't want to just limit this provision to the regulated health professions is because it has also come to our attention that, for example, children's aid societies would need some further flexibility too, in terms of the use of the information once they've received it. So once you've received it, subsection (1) speaks to the recipient and says, "You can in fact use it to carry out a statutory or legal duty."

In subsection (2) there may have been a concern around the fact that a regulatory body, once they've received the information, could only use information as limited by subsection (2). Again, if they received it for a statutory or legal duty, then they can use it for that purpose. In fact, further exceptions and additional requirements can be prescribed, although we don't anticipate that any would be needed. But certainly there is flexibility there.

In terms of a hospital disclosing a physician's information to the college, if there is a requirement to report under the RHPA, the hospital would report. At that point, if it's the physician's information, that wouldn't even be the subject of this act because if it's purely physician information, then the Personal Health Information Protection Act doesn't apply. If it's information about the physician that includes, perhaps, other patient information, section 47 would apply. If someone else provided the care to the physician and therefore there is information about his or her addiction, section 47 should also address that issue too, because you can certainly use it for the purpose of carrying out a statutory legal duty, and whatever is permitted or required under the RHPA continues to be permitted or required.

1400

Mr Orr: On that note, I would also point to clause 9(2)(d.1), which was in the motions that were passed this morning, which says that nothing in this act shall be construed to interfere with the regulatory activities of a college under the Regulated Health Professions Act, etc. That provides some additional clarity.

Mrs Witmer: So then you're guaranteeing me that in the example I've used—it may or may not be extreme—if a doctor were to be terminated and there had been a problem of sexual abuse or addiction, for lack of other examples, that information would continue and must be communicated to the college?

Ms Perun: Must I guarantee? What I would like to say with respect to section 47 is that the whole package of RHPA fixes—this is something we would be very interested to hear feedback on from the colleges once it's out in the public domain as to what changes were done. Then, if there is the need for further fixes, certainly we would take the advice to deal with the issues, if there are any other issues.

Mrs Witmer: Since you've given me that guarantee, that's fine.

The Chair: Other comments or questions? If none, those in favour of amendment number 81, a government motion? Against, if any? I see none. It is carried.

Amendment number 82, an NDP motion.

Ms Martel: I think this came forward in some of the original concerns that were raised by the federation and individual colleges, as I see the word "college." Maybe I'd better ask ministry staff if this has been dealt with. I apologize. There were a number that came forward and I know you're trying to fix most of them. I'm just not sure that they're all being fixed.

Ms Perun: This was a very long-winded explanation I gave with respect to section 47 and the amendments that were proposed under the government motion.

Ms Martel: So the one we just dealt with?

Ms Perun: The one we just did, yes.

Ms Martel: It looks like it has been taken care of, then, Mr Chair. I'm assured that it has been taken care of, so I will withdraw my motion.

The Chair: Amendment number 82 has been withdrawn. I move on to amendment number 83, a PC motion.

Mrs Witmer: We would withdraw that motion.

The Chair: So 83 is withdrawn also.

Shall section 47 of schedule A, as amended, carry? Against? I see none. It is carried.

Now we'll move on to section 48: amendment 84, a PC motion.

Mrs Witmer: Again, in the light of the discussion, I would withdraw that motion.

The Chair: So 84 has been withdrawn.

Number 85 is a government motion.

Mr Fonseca: I move that subsection 48(3) of the Personal Health Information Protection Act, 2003 be struck out.

The Chair: Questions or comments? I see none. Those in favour of the amendment? Against, if any? I see none. It is carried.

Motion 86, a PC motion.

Mrs Witmer: Again, in light of the discussion, we would withdraw this.

The Chair: So 86 has been withdrawn.

Shall section 48 of schedule A, as amended, carry? Against? I see none. It is carried.

We'll move on to section 49. I don't see any amendments. Shall section 49 of schedule A carry? It is carried.

Section 50: amendment 87, a government motion.

Mr Fonseca: I move that clauses 50(1)(a) and (b) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(a) the record or the information in the record is subject to a legal privilege that restricts disclosure of the record or the information, as the case may be, to the individual;

"(b) another act, an act of Canada or a court order prohibits disclosure to the individual of the record or the information in the record in the circumstances."

The Chair: Any questions or comments? I see none. All those in favour of amendment number 87? Against, if any? I see none. It is carried.

Amendment number 88, an NDP motion.

Ms Martel: I move that subclause 59(1)(e)(i) of the Personal Health Information Protection Act, 2003 be amended by striking out "serious bodily harm" and substituting "serious bodily or psychological harm".

Mr Chair, you will recall that we heard from the psychological association on Thursday. It was his view that we add the word "psychological." The example he gave had to do with a young individual who had not yet been told that he had been adopted, and that was in his records. Disclosure of that information certainly wouldn't cause him serious bodily harm, but not knowing he was adopted and finding that out through health records at 15 might cause him psychological harm. That's why I've included it here. It didn't come forward from the government, so I'm not sure if you've dismissed it or you have some opposition to it. I guess I'm going to hear that right now.

The Chair: Questions or comments? Clarification from the ministry staff?

Mr Orr: I will clarify that. The jurisprudence interpreting the term "serious bodily harm," and it's a fairly commonly and widely used term, is such that it does include psychological harm. One does not need to add "psychological harm." Serious bodily harm, according to the established jurisprudence, includes psychological harm. So we felt that it wasn't necessary to do this.

Ms Martel: Let me just raise something with you. I thought that came forward from a pretty legitimate group, since it was their association, not a specific practitioner. I wouldn't pretend to know much about jurisprudence—I'm not a lawyer—but when I just see "bodily," as a layperson I read that as "physical harm" to self inflicted somewhere; I don't read it as "psychological."

If it wouldn't cause the government grief one way or the other, I guess I'd like to see it added—or take out "bodily" and just put "serious harm." Then it's wide open.

Ms Wynne: Could I just ask, Mr Chair, if staff could explain why it would be a problem to include "psychological"?

Mr Orr: First, to address Ms Martel's point about how it may be an option to take out the words "bodily harm," it certainly is something that was considered, but it was thought that would be too broad, that it might entail things like financial harm, which may give much further grounds for refusing than the term "bodily harm," so it was thought that the term "bodily harm" was the appropriate term.

To address Ms Wynne's question, it would be possible to put in a term like "psychological" despite the fact that it is not legally necessary. The problem with that is, once you start adding in terms you have to ask yourself what you are leaving out, once you start coming up with a grocery list.

When we looked at it, what we decided is that there is an established jurisprudence on this term, "serious bodily harm." It's used in other pieces of Ontario legislation, like the Patient Restraints Minimization Act. There, it doesn't talk about psychological harm. If we were to have "psychological harm" in here in addition to "serious bodily harm," it would raise a question then about the application of the Patient Restraints Minimization Act. So we came to the conclusion that we should probably just leave it with the term "serious bodily harm."

Ms Perun: In addition, the Mental Health Act involuntary committal criteria talk about serious bodily harm and do not speak to it as psychological or physical. So, it's a fairly broad category.

1410

The Chair: Other comments? Seeing none, we'll vote on amendment number 88, an NDP motion. Those in favour of the amendment? I see Ms Martel. Against the amendment? It is defeated.

Number 89, a government motion.

Mr Fonseca: I move that section 50 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Health information custodian not relieved of responsibility

"(7) Nothing in this part relieves a health information custodian from a legal duty to provide, in a manner that is not inconsistent with this act, personal health information as expeditiously as is necessary for the provision of health care to the individual."

The Chair: Questions or comments?

Ms Martel: Can I just ask a question about this? Is this to respond to concerns by CMHA about the difference between days?

Ms Appathurai: Yes, in part.

Ms Perun: There is also another motion that addresses that issue specifically.

Ms Appathurai: We are responding to concerns that individuals had raised that the health information custodian has to respond within 30 days, and what do you do when an individual, a patient needs that information much more quickly? This provides the health information custodian with knowledge that he can act earlier, and provides an ability for the patient to speak to the Information and Privacy Commissioner when that's not provided.

Ms Martel: That 30 days is actually in the legislation somewhere else, and we'll be changing that. We haven't got to it yet?

Ms Perun: That is motion number 91. This motion number 89 also simply speaks to the custodian, that he or she is not relieved of their responsibility. So they cannot hide behind the 60-day period and say, "I have 60 days to deal with it." In fact, if they need the record for the care, that is outside an access request; that should just be done.

The Chair: Any other questions or comments? If none, those in favour of the amendment? Against, if any? I don't see any against, so it is carried.

Shall section 50 of schedule A, as amended, carry? Against? One against. Carried.

Shall section 51 of schedule A carry? Against, if any? I don't see any, so it is carried.

Section 52: amendment number 90, a government motion.

Mr Fonseca: I move that subsection 52(1) of the Personal Health Information Protection Act, 2003 be amended by striking out "or" at the end of clause (b) and by striking out clause (c) and substituting the following:

"(c) if the custodian is entitled to refuse the request, in whole or in part, under any provision of this part other than clauses 50(1)(c), (d) or (e), give a written notice to the individual stating that the custodian is refusing the request, in whole or in part, and stating that the individual is entitled to make a complaint about the refusal to the commissioner under part VI; or

"(d) if the custodian is entitled to refuse the request, in whole or in part, under clause 50(1)(c), (d) or (e), give a written notice to the individual stating that the custodian is refusing to confirm or deny the existence of any record subject to any of those provisions and that the individual is entitled to make a complaint about the refusal to the commissioner under part VI."

The Chair: Questions or comments? I see none. In favour of amendment number 90? Against, if any? I don't see any. It is carried.

Amendment number 91, a government motion.

Mr Fonseca: I move that section 52 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Expedited access

"(4.1) If an individual requires access to his or her own record of personal health information on an urgent basis, the individual may make an application to the commissioner for a reduction in the amount of time in which a health information custodian is required to respond under subsection (2) and, despite subsections (2) and (3), the custodian shall provide access within the time specified by the commissioner."

The Chair: Comments or questions?

Ms Martel: Just a question: Does that application have to be in writing or can it be verbal? Do you need to clarify that?

Ms Perun: The application right now could be either, written or oral, but I imagine the commissioner, because the commissioner will set her own processes, will require a written application.

The Chair: Other comments or questions? Seeing none, those in favour of the amendment? Against, if any? I see none. It is carried.

Government motion 92.

Mr Fonseca: I move that subsection 52(7) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Right to complain and burden of proof

"(7) If the health information custodian refuses or is deemed to have refused the request, in whole or in part,

"(a) the individual is entitled to make a complaint about the refusal to the commissioner under part VI; and

"(b) in the complaint, the burden of proof in respect of the refusal lies on the health information custodian."

The Chair: Questions or comments? I see none. Those in favour of the amendment? Against, if any? It is carried.

Shall section 52 of schedule A, as amended, carry? Against? I see none. It is carried.

Section 53: amendment 93, a government motion.

Mr Fonseca: I move that clauses 53(10)(a) and (b) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(a) make the requested correction in the record by recording the correct information and,

"(i) by striking out the incorrect information in a manner that does not obliterate it, or

"(ii) if that is not possible, by labelling the information as incorrect and severing it from the record and storing it separately from the record, while maintaining a link in the record that enables the incorrect information to be traced;

"(a.1) if it is not possible to take the steps set out in subclause (a)(i) or (ii), ensure that there is a practical system in place so that a person accessing the incorrect

information is informed that the information is incorrect and is directed to the correct information;

"(b) give notice to the individual of what it has done under clause (a) or (a.1); and".

The Chair: Questions or comments? I see none. Those in favour of amendment number 93? Against? I don't see any. It is carried.

Shall section 53, as amended, carry? For? Against? I don't see any. It is carried.

Shall section 54, of schedule A carry? In favour? Against? It is carried.

Shall section 55 of schedule A carry? In favour? Against? It is carried.

Shall section 56 of schedule A carry? In favour? Against? It is carried.

Section 57: amendment 94, an NDP motion.

Ms Martel: As I look at my motion and at the government's which is following next, there are very few changes, I think, between mine and the government's. That responds to the concerns from the presentation by the commissioner. Since I see there are some changes, I will withdraw mine.

The Chair: Amendment number 94 has been withdrawn by Ms Martel.

We move on to amendment 95. It is a government motion. Mr Fonseca? Oh, he's not there. Ms Wynne. Sorry. I wasn't looking.

1420

Ms Wynne: I didn't look when I said I would do it. I didn't look to see what motion was coming.

I move that sections 57, 58 and 59 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Power to enter

"57 (1) In conducting a review under section 55 or 56, the commissioner may, without a warrant or court order, enter and inspect any premises in accordance with this section if,

"(a) the commissioner has reasonable grounds to believe that,

"(i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject matter of the complaint or the review, as the case may be, and

"(ii) the premises contain books, records or other documents relevant to the subject matter of the complaint or the review, as the case may be;

"(b) the commissioner is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this act or its regulations; and

"(c) the commissioner does not have reasonable grounds to believe that a person has committed an offence.

"Review powers

"(2) In conducting a review under section 55 or 56, the commissioner may,

"(a) demand the production of any books, records or other documents relevant to the subject matter of the review or copies of extracts from the books, records or other documents;

"(b) inquire into all information, records, information practices of a health information custodian and other matters that are relevant to the subject matter of the review;

"(c) demand the production for inspection of anything described in clause (b);

"(d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject matter of the review; or

"(e) on the premises that the commissioner has entered, review or copy any books, records or documents that a person produces to the commissioner, if the commissioner pays the reasonable cost recovery fee that the health information custodian or person being reviewed may charge.

"Entry to dwellings

"(3) The commissioner shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under subsection (4).

"Search warrants

"(4) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary to enter a place that is being used as a dwelling to investigate a complaint that is the subject of a review under section 55, he or she may issue a warrant authorizing the entry by a person named in the warrant.

"Time and manner for entry

"(5) The commissioner shall exercise the power to enter premises under this section only during reasonable hours for the premises and only in such a manner so as not to interfere with health care that is being provided to any person on the premises at the time of entry.

"No obstruction

"(6) No person shall obstruct the commissioner who is exercising powers under this section or provide the commissioner with false or misleading information.

"Written demand

"(7) A demand for books, records or documents or copies of extracts from them under subsection (2) must be in writing and must include a statement of the nature of the things that are required to be produced.

"Obligation to assist

"(8) If the commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the commissioner and, at the request of the commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document.

"Removal of documents

"(9) If a person produces books, records and other documents to the commissioner, other than those needed

for the current health care of any person, the commissioner may, on issuing a written receipt, remove them and may review or copy any of them if the commissioner is not able to review and copy them on the premises that the commissioner has entered.

"Return of documents

"(10) The commissioner shall carry out any reviewing or copying of documents with reasonable dispatch, and shall forthwith after the reviewing or copying return the documents to the person who produced them.

"Admissibility of copies

"(11) A copy certified by the commissioner as a copy is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied.

"Answers under oath

"(12) In conducting a review under section 55 or 56, the commissioner may, by summons, in the same manner and to the same extent as a superior court of record, require the appearance of any person before the commissioner and compel them to give oral or written evidence on oath or affirmation.

"Inspection of record without consent

"(13) Despite subsections (2) and (12), the commissioner shall not inspect a record of, require evidence of, or inquire into, personal health information without the consent of the individual to whom it relates, unless,

"(a) the commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual's consent in the circumstances; and

"(b) the commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the commissioner's determination under clause (a) together with brief written reasons any restrictions and conditions that the commissioner has specified.

"Limitation on delegation

"(14) Despite section 65(1), the power to make a determination under clause (13)(a) and to approve the brief written reasons under clause (13)(b) may not be delegated except to the assistant commissioner.

"Document privileged

"(15) A document or thing produced by a person in the course of an inquiry is privileged in the same manner as if the inquiry were a proceeding in a court.

"Protection

"(16) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of a review by the commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the commissioner shall be given against any person.

"Protection under federal act

"(17) A person giving a statement or answer in the course of a review by the commissioner shall be informed by the commissioner of his or her right to object to answer any question under section 5 of the Canada Evidence Act.

"Representations

"(18) The person who made the complaint, the person about whom the complaint is made and any other affected person shall be given an opportunity to make representations to the commissioner.

"Access to representations

"(19) The commissioner may permit a person to be present during, to have access to or to comment on representations made to the commissioner by another person, unless that other person expressly requests otherwise.

"Counsel or agent

"(20) A person who is given an opportunity to make representations to the commissioner may be represented by counsel or an agent.

"Proof of appointment

"(21) If the commissioner or assistant commissioner has delegated his or her powers under this section to an officer or employee of the commissioner, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the commissioner or assistant commissioner, as the case may be."

The Chair: That could have been a good contest with Bert, a former Deputy Speaker. Questions or comments?

Ms Wynne: I think there's a comment that staff would like to make on this.

The Chair: Yes, please.

Ms Perun: This is with respect to the difference between the NDP motion and the government motion, and also the difference between the government motion and the amendments that were proposed by the privacy commissioner in her submission. It's subsection 57(13) at 95.2. Here, basically the way the amendment works is that without consent, the commissioner will in fact have access to health records and be able to speak to custodians; however, the commissioner first has to determine that this is reasonably necessary and that it's in the public interest to dispense with obtaining consent. Secondly, the commissioner, then, in exercising this decision, must provide a statement to the person who has custody or control of the record and also set out a brief written reason as to the reasons for requesting this information. So that is the primary difference between the approaches.

Secondly—and it's more of a technical matter—subsections 57(15) through (20) are procedural matters, and they are consistent with the provisions in the Freedom of Information and Protection of Privacy Act. Also to note in subsection 57(14), the limitation on delegation, this exercise of decision-making is not to be delegated to anyone but the assistant commissioner, and so no one else in the office will be able to exercise this discretion. It would rest with the commissioner or the assistant commissioner.

Ms Wynne: In clause 57(13)(b) on page 4, which is 95.3, there is a word that has been omitted in (b) in the second-last line: "together with brief written reasons" and

"any restrictions." So I need to move an amendment to insert "and."

The Chair: So it would read, "and any restrictions"?

Ms Wynne: Yes, "with brief written reasons and any restrictions and conditions that the commissioner has specified." I think Halyna was just talking about that. We need the "and" there.

The Chair: It's got to be an amendment. So it is an amendment to the amendment.

Other comments or questions? If none, we will vote on the amendment to the amendment first. Those in favour of the amendment to the amendment with the addition of the word "and" in clause 57(13)(b), the second-last line. In favour? Sorry, I didn't see that. In favour of the amendment? Against? I see none against. It is carried.

1430

Now we'll vote on the motion as amended. In favour of the motion as amended? Agreed? Against? I don't see any. It is carried.

Shall section 57 of schedule A, as amended, carry? In favour? Against? I see none. It is carried.

Section 58: We have some amendments. It's just that the amendment number was repeated three times.

Ms Perun: The motion that was just read deals with sections 57, 58 and 59.

Ms Wynne: Mr Chair, do we not need to move 58 and 59, now?

The Chair: Yes, we have to move that one. Thank you.

Shall section 58 of schedule A carry as amended? Just a second.

Mr Orr: The motion which was just passed, part of that motion was that sections 57, 58 and 59 be struck out and the text that was read be substituted. That means that there is no longer any section 58 or 59.

The Chair: So we're not doing anything on that then?

Mr Orr: I would just look to legislative counsel to confirm that we don't need a confirmation.

Clerk of the Committee: The motion on page 95 says right at the beginning "sections 57, 58 and 59 of the Personal Health Information Protection Act, 2003 be struck out." So, to me, they are gone and then we replace them with this amendment. Now we're going to go to the amendment to section 60, which is page 96.

The Chair: So we don't do anything for 58 or 59?

Clerk of the Committee: No, because they were struck out.

The Chair: Thank you. Section 60: amendment 96, a government motion.

Ms Wynne: I move that subsection 60(3) of the Personal Health Information Act, 2003 be amended by striking out "a copy of them to" in the portion before clause (a) and substituting "a copy of them, including reasons for any order made, to".

The Chair: Comments or questions? I see none. Those in favour? Carried.

Number 97 is a government motion.

Ms Wynne: I move that subsection 60(4) of the Personal Health Information Protection Act, 2003 be struck out.

The Chair: Any questions or comments?

If none; those in favour? Against, if any? I don't see any. It is carried.

Shall section 60 of schedule A, as amended, carry? In favour? Against? I don't see any.

It is carried.

Now, section 60.1, a government motion.

Ms Wynne: I move that the Personal Health Information Protection Act, 2003 be amended by adding the following section:

"Appeal of order

"60.1(1) A person affected by an order of the commissioner made under clauses 60(1)(c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order.

"Certificate of commissioner

"(2) In an appeal under this section, the commissioner shall certify to the Divisional Court,

"(a) the order and a statement of the commissioner's reasons for making the order;

"(b) the record of all hearings that the commissioner has held in conducting the review on which the order is based;

"(c) all written representations that the commissioner received before making the order; and

"(d) all other material that the commissioner considers is relevant to the appeal.

"Confidentiality of information

"(3) In an appeal under this section, the court may take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate, receiving representations without notice, conducting hearings in private or sealing the court files.

"Court order

"(4) On hearing an appeal under this section, the court may, by order,

"(a) direct the commissioner to make the decisions and to do the acts that the commissioner is authorized to do under this act and that the court considers proper; and

"(b) if necessary, vary or set aside the commissioner's order.

"Compliance by commissioner

"(5) The commissioner shall comply with the court's order."

The Chair: Thank you. Any questions or comments? I see none. Those in favour of the amendment? Against, if any? It is carried.

Section 61: government motion 99.

Ms Wynne: I move that section 61 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Enforcement of order

"61. An order made by the commissioner under this act that has become final as a result of there being no further right of appeal may be filed with the Superior Court of Justice and on filing becomes and is enforceable

as a judgment or order of the Superior Court of Justice to the same effect."

The Chair: Any questions or comments? I see none. Those in favour of the amendment? It is carried.

Shall section 61, as amended, be carried? Against, if any? It is carried.

Section 62: government motion number 100.

Ms Wynne: I move that subsection 62(3) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Copy of order, etc.

"(3) Upon making a further order under subsection (1), the commissioner shall provide a copy of it to the persons described in clauses 60(3)(a) to (e) and shall include with the copy a notice setting out,

"(a) the commissioner's reasons for making the order; and

"(b) if the order was made under clauses 60(1)(c) to (h), a statement that the persons affected by the order to have the right to appeal described in subsection (4).

"Appeal

"(4) A person to whom an order that the commissioner rescinds, varies or makes under subsection (1) is directed may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 60.1(2) to (5) apply to the appeal."

The Chair: Any questions or comments? I see none. In favour of the amendment? Against, if any? I don't see any against, so it is carried.

Shall section 62 of schedule A, as amended, carry? In favour? Against, if any? None against, so it is carried.

Section 63: government motion number 101.

Mr Fonseca: I'd like to withdraw the first amendment and replace it with this one that I'll read out now.

I move that subsection 63(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Damages for breach of privacy

"63(1) If the commissioner has made an order under this act that has become final as the result of there being no further right of appeal, a person affected by the order may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of a contravention of this act or its regulations."

1440

The Chair: Questions or comments on amendment number 101.1? There aren't any. Those in favour of the amendment? Against, if any? I don't see any against, so it is carried.

Shall section 63 of schedule A, as amended, carry? It is carried.

Section 64: amendment 102, a government motion.

Mr Fonseca: I move that clause 64(e) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(e) assist in investigations and similar procedures conducted by a person who performs similar functions to the commissioner under the laws of Canada, except that in providing assistance, the commissioner shall not use or disclose information collected by or for the commissioner under this act."

The Chair: Any questions or comments? I see none. All those in favour of the amendment? Against? It is carried.

Shall section 64, schedule A, as amended, carry? It is carried.

Section 65: amendment 103, a government motion.

Mr Fonseca: I move that subsection 65(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Delegation

"65(1) The commissioner may in writing delegate any of the commissioner's powers, duties or functions under this act, including the power to make orders, to the assistant commissioner or to an officer or employee of the commissioner."

The Chair: Any questions or comments? I see none. Those in favour of the motion? Against? None. It is carried.

Shall section 65 of schedule A carry, as amended? Against? I see none. It is carried.

Section 66: amendment 104, a government motion.

Mr Fonseca: I move that section 66 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsections:

"Limitation on collection, use or retention of personal health information

"66(0.1) The commissioner and any person acting under his or her authority may collect, use or retain personal health information in the course of carrying out any functions under this part solely if no other information will serve the purpose of the collection, use or retention of the personal health information and in no other circumstances.

"Same

"(0.2) The commissioner and any person acting under his or her authority shall not in the course of carrying out any functions under this part collect, use or retain more personal health information than is reasonably necessary to enable the commissioner to perform his or her functions relating to the administration of this act or for a proceeding under it."

The Chair: Any questions or comments? None. Those in favour of the amendment? Against, if any? It is carried.

Now amendment number 105, a government motion.

Mr Fonseca: I move that clause 66(1)(c) of the Personal Health Information Protection Act 2003 be amended by striking out "or" at the end of clause (b), by striking out clause (c) and by substituting the following:

"(c) the commissioner obtained the information under subsection 57(12) and the disclosure is required in a prosecution for an offence under section 131 of the Criminal Code (Canada) in respect of sworn testimony; or

"(d) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an act or an act of Canada and the commissioner is of the view that there is evidence of such an offence."

The Chair: Questions or comments? I see none. Those in favour of amendment 105? Against, if any? It is carried.

Shall section 66 of schedule A, as amended, carry? All in favour? Against? None. It is carried.

Section 67: Shall section 67 of schedule A carry? Against? I see none. It is carried.

Section 68: Shall section 68 of schedule A carry? Against? It is carried.

Section 69: amendment 106, a government motion.

Mr Fonseca: I move that clause 69(4)(b) of the Personal Health Information Protection Act, 2003 be amended by striking out "section 23" and substituting "section 5 or 23".

The Chair: Questions or comments? Seeing none, all in favour of amendment 106? Against? Seeing none, carried.

Shall section 69 of schedule A carry, as amended? Against? It is carried.

Section 70: government motion number 107.

Mr Fonseca: I move that clause 70(1)(b) of the Personal Health Information Protection Act, 2003 be struck out.

The Chair: Questions and comments?

Mrs Witmer: I'm just wondering why that is being omitted. I don't remember.

The Chair: Clarification?

Mr Orr: I can answer the question. Clause (b) is being taken out because it's covered by (c). When you look at all the items in (c), anything that would be covered by (b) is now covered by (c).

The Chair: Any other questions or comments? Seeing none, those in favour of amendment 107? Against? None. Carried.

Amendment 108, a government motion.

Mr Fonseca: I move that clauses 70(1)(d) and (e) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(d) disposes of a record of personal health information after a request for access to the record is received under subsection 51(1) with an intent to evade the request for access to the record;

"(e) wilfully disposes of a record of personal health information in contravention of section 13;"

The Chair: Questions or comments? I see none. All in favour of amendment 108? Against? I see none. It is carried.

Amendment 109, a government motion.

Mr Fonseca: I move that section 70 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Attorney General may commence a prosecution

"(5) No person other than the Attorney General or a counsel or agent acting on behalf of the Attorney General may commence a prosecution for an offence under subsection (1)."

The Chair: Questions or comments? I see none. Those in favour of amendment 109? Against? I see none. It is carried.

Shall section 70 of schedule A, as amended, carry?

Ms Martel: I have a question on subsection 70(3). I forget which presentation it was, but I'm wondering why the wording hasn't been changed in the penalty section. We have a person who is guilty of an offence, and there's a listing of financial penalties. Then we have, "If a corporation commits an offence," instead of "is guilty of an offence," then a number of things happen. I believe we had a presentation that said the wording should be the same to make it clear that people are guilty rather than have committed an offence, if the penalties are to apply under subsection (3) with respect to the officers. Is that covered somewhere else?

The Chair: Is the ministry staff ready to respond?

Ms Perun: The question that we had was with respect to subsection (3), that it should be deleted?

Ms Martel: No, the suggestion is that it should say if a corporation is guilty, so it matches—

Ms Perun: The issue was whether or not the corporation has been prosecuted or convicted, so it's a strict liability provision. We actually just went back and reviewed other offence provisions that pertain to corporations, and they're very consistent. So we're basically consistent in our approach with other Ontario legislation.

Ms Martel: So the language with respect to officers is consistent with other statutes?

Ms Perun: That's right.

The Chair: Now we'll take the vote. Shall section 70 of schedule A, as amended, carry? In favour? Against? I don't see any. It is carried.

Section 71: NDP motion 110.

1450

Ms Martel: I had put that forward as a result of the presentation that came forward by NAID with respect to having criteria around destruction and disposal etc of documents. In conversation with ministry staff earlier this morning, I gather there is going to be more discussion with other stakeholders as well about the best way to do that, so I will withdraw that for now, although it would have to be done by regulation at some point, right? So I withdraw that.

The Chair: So you'll withdraw 110.

Amendment 111, an NDP motion.

Ms Martel: This goes back to our trying to accommodate the request that had come forward by Smart Systems. I gather that more work is going to have to go on so I will withdraw the amendment at this time.

The Chair: You will withdraw 111.

Amendment 112, an NDP motion.

Ms Martel: I don't know if I'm going to withdraw this one because I don't think we've had a discussion about research ethics boards. I must admit that I do have some concerns about how these get composed, how they become legitimate. If the ministry staff can tell me how

you are going to do that, then it may mean that I will withdraw it.

Ms Perun: From a purely technical point of view, the research ethics board is defined on page 8 of the bill; it "means a board of persons that is established for the purpose of approving research plans under section 43 and that meets the prescribed requirements." So already there is a regulation-making power that addresses the issue that there should be regulations pertaining to REBs, and the NDP motion pertaining to (k.1) is not needed. It's redundant because there is already a regulation-making power to deal with research ethics boards. That's from a legal point of view.

Ms Martel: So where it says in the definition "that meets the prescribed requirements," under that section the ministry will set up all the criteria to establish a recognized REB?

Ms Perun: That's right.

Ms Martel: Mr Chair, I would withdraw it.

The Chair: You'll withdraw 112.

Number 113 is a government motion.

Mr Fonseca: I move that subsection 71(1) of the Personal Health Information Protection Act, 2003 be amended by adding the following clause:

"(m.l) prescribing under what circumstances the Canadian Blood Services may collect, use and disclose personal health information, the conditions that apply to the collection, use and disclosure of personal health information by the Canadian Blood Services and disclosures that may be made by a health information custodian to the Canadian Blood Services;"

The Chair: Questions or comments? Seeing none, those in favour of amendment 113? Against, if any? It is carried.

Government motion 114.

Mr Fonseca: I move that section 71 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Same

"(4) Where this act specifies a power to prescribe a person, the power may be used to prescribe a class of persons."

The Chair: Questions or comments? Seeing none, those in favour of amendment 114? Against, if any? I don't see any. It is carried.

Shall section 71 of schedule A, as amended, carry? It is carried.

Ms Perun: May I just say something with respect to the last motion and the Canadian Blood Services? Because I did say that I was going to say where we had consulted. With respect to the Canadian Blood Services' regulation-making power, this language has been reviewed by the Canadian Blood Services and we will continue working with them.

The Chair: Thank you.

Section 72: amendment 115, an NDP motion.

Ms Martel: I move that subsection 72(11) of the Personal Health Information Protection Act, 2003 be struck out.

This is the section that says "no review," that is, no review of a decision made by the minister to not have a public consultation around a specific regulation or set of regulations. I raised this with the minister when we first met. I've raised it again with ministry staff and understand that their reasoning is that there is a two-year time provision where that would expire anyway. In most cases it might be an emergency etc. However, I just don't know why you would want to have any kind of section where there wouldn't be a review of this decision. It just makes it look like there might be something to hide. I don't think you want to be there and have that as a perception. I do think as well, and I stand to be corrected, in the commissioner's presentation to us, while it was not highlighted in her oral submission, in her written submission she made reference to this as well.

I just think that we shouldn't have a provision that would not allow for some kind of a review, even if it's by the commissioner—probably specifically by the commissioner, since it's that office that will have overarching responsibility to deal with this legislation.

The Chair: Questions or comments? Ministry staff.

Mr Orr: I think that it's largely a policy decision, so I'm not going to say a lot on it. I would point out that the kind of provision for requiring consultation on regulations in Ontario legislation is fairly rare. This is based on the provision from the Environmental Bill of Rights. Normally there is no requirement on this kind of function. I think one of the reasons is because it's really a legislative function. The kind of function that's being carried on here today is a legislative function, and one wouldn't expect to have an appointed person overseeing that process to make sure that it's done properly. It's done by elected people.

The regulations—it's a delegated power. It's a power that the Legislature delegates to the cabinet to make regulations. In the same way, I think that the argument can be made that, since it's a legislative function, it is not appropriate that an appointed official be given oversight.

Ms Martel: If I might, Mr Chair, I appreciate that explanation. I think the government was going in the right direction in this section to say that there would be a very public process around making regulations, and it contradicts what I think is an important and good step—to have a public process around regulations—because we haven't had much of that in a long time. I just think it flies in the face of what is a good requirement to then turn around and say, "Well, in some cases there may not be a public process, and there's no appeal mechanism." I understand it's a policy matter. I know what that means. I can appreciate that's not going to be changed, but I just think it flies in the face of what is otherwise a very positive action.

The Chair: We'll vote on this one. Any other comments or questions? If none, those in favour of amendment 115? Ms Martel. Against? It is defeated.

Amendment 116, a PC motion.

Mrs Witmer: I move that section 72 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsections:

"Regulations laid before assembly before making

"(12) In addition to any other requirement in this section, the Lieutenant Governor in Council shall not make any regulation under section 71 unless,

"(a) the minister lays the text of the proposed regulation before the assembly if it is in session or, if not, at the next session; and

"(b) the proposed regulation is referred to a standing committee of the assembly for review.

"Review by committee

"(13) A regulation under section 71 shall not be made until after the standing committee to which it has been referred under subsection (12) has reviewed the proposed regulation and reported back to the assembly."

If we take a look at this legislation, which is now in its third or fourth iteration, there still remains a lot of information that is going to determine how this bill is going to be implemented and the impact it might have that's going to be done through means of regulation-making. A lot of the stakeholders have expressed some concerns about what may or may not be in the regulations, and whether it will indeed provide the protection and the authority to move forward. We've heard today, as we've gone through this, that there's a lot here that remains to be done in regulations.

So this would require the minister to table the regulations, refer them to committee and, in some respects, it would provide some accountability and transparency to Bill 31. There was certainly concern expressed about the minister's broad regulation-making authority, so that will counterbalance the scope of this broadness and help provide some legitimacy to the regulations that the government will introduce.

1500

The Chair: Any other comments or questions? If none, we will proceed with the voting.

All those in favour of amendment 116? Three. Against? Five. The amendment is defeated.

Shall section 72 of schedule A carry? All those in favour? All those against? None. It is carried.

Shall section 73 of schedule A carry? It is carried.

Shall section 74 of schedule A carry? It is carried.

Section 75: amendment 117, a government motion.

Mr Fonseca: I move that subsection 75(2) of schedule A to the bill, amending subsection 9.7(1) of the Charitable Institutions Act, be struck out.

The Chair: Questions or comments? Seeing none, all those in favour of the amendment? All those against? I don't see any against, so it is carried.

Amendment 118, a government motion.

Mr Fonseca: I move that subsection 75(4) of schedule A to the bill, amending section 12 of the Charitable Institutions Act, be struck out and the following substituted:

"(4) Section 12 of the act, as amended by the Statutes of Ontario, 1993, chapter 2, section 10, 1994, chapter 26, section 70, 1996, chapter 2, section 61 and 1997, chapter 15, section 3, is amended by adding the following subsections:

"Exception

"(4) A regulation made under clause (1)(z.6) shall not apply to a record of personal health information within the meaning of the Personal Health Information Protection Act, 2003.

"Same

"(5) Despite subsection (4), a regulation made under clause (1)(z.6) that relates to the security, retention or disposal of a record of personal health information within the meaning of the Personal Health Information Protection Act, 2003 applies to the extent that the regulation is consistent with that act and the regulations made under it."

The Chair: Questions or comments? Seeing none, all those in favour of amendment 118? Against, if any? None. It is carried.

Shall section 75 of schedule A, as amended, carry? It is carried.

Shall section 76 of schedule A carry? Against, if any? Seeing none, it is carried.

Shall section 77 of schedule A carry? It is carried.

Shall section 78 of schedule A carry? It is carried.

Section 79: government motion 119.

Mr Fonseca: I move that section 79 of schedule A to the bill, amending the Freedom of Information and Protection of Privacy Act, be amended by adding the following subsections:

"(1.1) Clause 33(2)(c) of the act is repealed and the following substituted:

"(c) a reference to the provision of this act or the Personal Health Information Protection Act, 2003 on which the head relies."

"(1.2) Subsection 34(2) of the act is repealed and the following substituted:

"Contents of report

"(2) A report made under subsection (1) shall specify,

"(a) the number of requests under this act or the Personal Health Information Protection Act, 2003 for access to records made to the institution;

"(b) the number of refusals by the head to disclose a record, the provisions of this act or the Personal Health Information Protection Act, 2003 under which disclosure was refused and the number of occasions on which each provision was invoked;

"(c) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45(d) and (e) or the written public statement provided under subsection 16(1) of the Personal Health Information Protection Act, 2003;

"(d) the amount of fees collected by the institution under section 57 or under subsection 52(9) of the Personal Health Information Protection Act, 2003; and

"(e) any other information indicating an effort by the institution to put into practice the purposes of this act or the Personal Health Information Protection Act, 2003."

The Chair: Questions or comments?

Ms Martel: Has the commissioner reviewed this whole section?

Ms Perun: These were reviewed by the Management Board of Cabinet, which has jurisdiction over the freedom-of-information legislation particularly. This is that technical fix that resided earlier in section 8. Section 8 referenced section 34, and now it has been split to actually be reflected in FIPPA. Michael would be able to answer anything else. It was in section 34 earlier, and now it resides in its entirety in FIPPA.

Mr Orr: The short answer to the question, though, I think is that the Information and Privacy Commissioner has not seen these particular provisions—not seen the amendments. She has not seen the motions. She has seen the amendments being made in the bill, and we considered her comments. As I understand it, at second reading we will have an opportunity to make further changes if it is necessary.

Ms Martel: Because some of the requirement is now on her office to do a number of these things versus government per se, in terms of the reporting?

Mr Orr: No, these reporting requirements were previously on government and continue to be on government. All that's happening here is that there is an expansion of the provision so that it deals not just with the government institutions' obligations to report matters under the Freedom of Information and Protection of Privacy Act but also the obligations to report matters relating to their administration of this bill, the number of access requests, how they've been disposed of and that kind of thing. These particular provisions are in relation to the obligations of government offices, so this will relate to the Ministry of Health.

The Chair: Ms Wynne, you had a question?

Ms Wynne: No, sorry.

The Chair: Any other questions or comments? If none, those in favour of government amendment 119? Against? I don't see any. So it is carried.

Amendment 120, a government motion.

Ms Wynne: I move that subsection 58(3) of the Freedom of Information and Protection of Privacy Act, as set out in subsection 79(3) of schedule A to the bill, be amended by adding the following clause:

"(b.l) information related to the number of times the commissioner has made a determination under subsection 57(13) of that act and general information about the commissioner's grounds for the determination."

The Chair: Any questions or comments? Seeing none, those in favour of amendment 120? Against? It is carried.

Shall section 79 of schedule A, as amended, carry? Against? It is carried.

There are no amendments to sections 80 to 81 of schedule A. Shall sections 80 and 81 carry? Against? Seeing none, carried.

Section 82:

Ms Wynne: It's an amendment to subsection 82(3.1).

I move that section 82 of schedule A to the bill, amending the Health Care Consent Act, 1996 be amended by adding the following subsection:

"(3.1) Subsection 20(8) of the act is amended by striking out 'within the meaning of the Divorce Act, (Canada)' at the end."

This speaks to Ms Martel's earlier proposed amendment regarding the definitions of "relative" and "spouse."

1510

The Chair: Any comments or questions? Seeing none, all in favour of the amendment to subsection 82(3.1)? Against? None. It is carried.

Shall section 82 of schedule A, as amended, carry? That is carried.

Shall sections 83 and 84 of schedule A carry? Carried.

Section 85: government motion 121.

Ms Wynne: I move that subsection 85(2) of schedule A to the bill, amending subsection 18.1(1) of the Homes for the Aged and Rest Homes Act, be struck out.

The Chair: Any questions or comments? None. Those in favour of amendment 121? Against? Seeing none, it is carried.

Shall section 85 of schedule A, as amended, carry? It is carried.

Shall section 86 of schedule A carry? Carried.

Section 87: amendment 122, a government motion.

Ms Wynne: I move that subsection 87(3) of schedule A to the bill, amending the definition of "substitute decision-maker" in subsection 2(1) of the Long-Term Care Act, 1994 be struck out and the following substituted:

"(3) The definition of 'substitute decision-maker' in subsection 2(1) of the act, as enacted by the Statutes of Ontario, 1996, chapter 2, section 71, is amended by repealing clause (a) and substituting the following:

"(a) any person who is a substitute decision-maker within the meaning of the Personal Health Information Protection Act, 2003, or".

The Chair: Questions or comments? Seeing none, in favour of amendment 122? Against, if any? It is carried.

Amendment 123, a government motion.

Ms Wynne: I move that section 32 of the Long-Term Care Act, 1994, as set out in subsection 87(6) of schedule A to the bill, be struck out and the following substituted:

"Permitted disclosure of personal health information

"32. A service provider may disclose a record of personal health information to the minister if the disclosure is for the purpose of enabling the minister to exercise a power under section 64."

The Chair: Comments or questions? Seeing none, those in favour of amendment 123? Against? Seeing none, it is carried.

Amendment 124, a government motion.

Ms Wynne: I move that subsection 36(1) of the Long-Term Care Act, 1994, as set out in subsection 87(14) of schedule A to the bill, be amended by striking out "subsection 86(14)" and substituting "subsection 87(14)".

The Chair: Questions or comments? Seeing none, all in favour of amendment 124? Against, if any? Seeing none, it is carried.

Shall section 87 of schedule A, as amended, carry? Against? Seeing none, it is carried.

Section 88: amendment 125, a government motion.

Ms Wynne: I move that subsection 88(1) of schedule A to the bill, amending subsection 1(1) of the Mental Health Act, be struck out and the following substituted:

"Mental Health Act

"88. (1) The definition of "mentally competent" in subsection 1(1) of the Mental Health Act is repealed.

"(1.1) Subsection 1(1) of the act, as amended by the Statutes of Ontario, 1992, chapter 32, section 20, 1996, chapter 2, section 72 and 2000, chapter 9, section 1, is amended by adding the following definitions:

"'personal health information' has the same meaning as in the Personal Health Information Protection Act, 2003; ('renseignements personnels sur la santé')

"'record of personal health information', in relation to a person, means a record of personal health information that is compiled in a psychiatric facility in respect of the person; ('dossier de renseignements personnels sur la santé')

"(1.2) The definition of 'substitute decision-maker' in subsection 1(1) of the act, as enacted by the Statutes of Ontario, 1996, chapter 2, section 72, is repealed and the following substituted:

"'substitute decision-maker', in relation to a patient, means the person who would be authorized under the Health Care Consent Act, 1996 to give or refuse consent to a treatment on behalf of the patient, if the patient were incapable with respect to the treatment under that act, unless the context requires otherwise; ('mandataire spécial')"

The Chair: Questions or comments?

Ms Martel: There are a number of changes in this section, and I don't pretend to know what's happening. I would just appreciate a really quick clarification of what you're doing and either who has asked for this or who it's been cleared by.

Ms Perun: Basically these amendments—there are about 10. One of them is actually to deal with a PPAO issue that came up at the standing committee; otherwise, it's all very technical fixes that were basically errors we didn't pick up when we were drafting this legislation.

For example, there is a definition of "mentally competent," but it needed to be repealed because there's a definition of mental capacity in the Personal Health Information Protection Act, and that definition would be used in terms of information flow. The only time it's actually used in the Mental Health Act now, with all these amendments, would be in a very discrete information context. So there was no need to have two definitions of mental capacity.

The substitute decision-maker—the only time the context requires otherwise is set out in a particular section of the Mental Health Act, and that is where there is reference in another amendment to PHIPA, the Personal Health Information Protection Act. Otherwise, a substitute decider under the Health Care Consent Act is the substitute decision-maker, because it's more to do with treatment and care and not information flow.

Basically, we just didn't pick up some of these fixes that needed to be picked up.

Ms Martel: Can I save some time, then, and when we get to the particular change by PPAO—they made a number of suggestions, and I gather we're going for a lot of them—I would just appreciate knowing which one it is.

Ms Perun: OK.

The Chair: No other questions?

Those in favour of amendment 125? Against, if any? I see none. It is carried.

Amendment number 126, a government motion.

Ms Wynne: I move that subsection 35(4.1) of the Mental Health Act, as set out in subsection 88(5) of schedule A to the bill be, struck out.

The Chair: Questions or comments?

Ms Wynne: Could we have a comment on—

Ms Perun: There were two clauses here before. One of them was deleted to be consistent with the policy direction in Bill 31, where the flow of information between facilities is on implied consent. This preservation from the Mental Health Act allowed the CEO to disclose records to the next CEO without consent. That was proposed to be deleted for that purpose.

With respect to the disclosure to a lawyer, there was a general amendment made in the main act to allow disclosures to lawyers and lawyers who are retained by employees. Therefore, that particular section was redundant.

The Chair: Other comments or questions?

Seeing none, Those in favour of amendment 126; against, if any? It is carried.

Amendment 127, a government motion.

Ms Wynne: I move that section 88 of schedule A to the bill, amending the Mental Health Act, be amended by adding the following subsection:

"(5.1) The following provisions of the act are amended by striking out 'clinical record' wherever it appears and substituting in each case 'record of personal health information':

"1. Subsection 35(5).

"2. Subsection 35(6).

"3. Subsection 35(7)."

1520

The Chair: Questions or comments?

Seeing none, those in favour of amendment 127; against, if any? Seeing none, it is carried.

Amendment 128, a government motion.

Ms Wynne: I move that section 88 of schedule A to the bill, amending the Mental Health Act, be amended by adding the following subsection:

"(5.2) Subsection 35(8.1) of the act, as enacted by Statutes of Ontario, 1992, chapter 32, section 20, is repealed."

The Chair: Questions or comments?

Ms Perun: To the extent that this particular section already resides in the complementary amendments that were made, it needed to be repealed in the main act. The only reason it was re-introduced in amendments is because the reference to "clinical record" was changed to "record of personal health information" and so exactly

the same provision appears in subsection 88(5) and the new subsection 35(3).

The Chair: Any more questions? Those in favour of motion 128? Against? None. It is carried.

Amendment 129, a government motion.

Ms Wynne: I move that subsection 88(6) of schedule A to the bill, amending subclause 35(9)(b)(i) of the Mental Health Act, be struck out and the following substituted:

"(6) Subsection 35(9) of the act, as re-enacted by the Statutes of Ontario, 1992, chapter 32, section 20 and amended by 1996, chapter 2, section 72, is repealed and the following substituted:

"Disclosure in proceeding

"(9) No person shall disclose in a proceeding in any court or before any body any information in respect of a patient obtained in the course of assessing or treating the patient, or in the course of assisting in his or her assessment or treatment, or in the course of employment in the psychiatric facility, except,

"(a) where the patient is mentally capable within the meaning of the Personal Health Information Protection Act, 2003, with the patient's consent;

"(b) where the patient is not mentally capable, with the consent of the patient's substitute decision-maker within the meaning of the Personal Health Information Protection Act, 2003; or

"(c) where the court or, in the case of a proceeding not before a court, the Divisional Court determines, after a hearing from which the public is excluded and that is held on notice to the patient or, if the patient is not mentally capable, the patient's substitute decision-maker referred to in clause (b), that the disclosure is essential in the interests of justice."

The Chair: Questions or comments? Comments from the staff?

Ms Perun: I just wanted to explain that the only change here is that the words "mentally competent" are replaced with "mentally capable." Also, it's within the meaning of the Personal Health Information Protection Act. That's in clause (a) and clause (b).

Then in clause (c) "mentally competent" was changed to "mentally capable." The patient's substitute decision-maker is the one that's referred in clause (b), meaning the substitute decision-maker within the meaning of the Personal Health Information Protection Act. Otherwise, there is no change in policy here.

The Chair: Other questions or comments? If none, those in favour of amendment 129? Against, if any? I don't see any. It is carried.

Amendment 130, a government motion.

Ms Wynne: I move that section 88 of schedule A to the bill, amending the Mental Health Act, be amended by adding the following subsection:

"(6.1) Subsection 35(12) of the act, as enacted by Statutes of Ontario, 1996, chapter 2, section 72, is repealed."

The Chair: Questions or comments? If none, in favour of amendment 130? Against, if any? It is carried.

Amendment 131, a government motion.

Ms Wynne: I move that subsection 88(7) of schedule A to the bill, amending the Mental Health Act, be struck out and the following substituted:

"(7) Section 36 of the act, as amended by the Statutes of Ontario, 1992, chapter 32, section 20, 1996, chapter 2, section 72 and 2000, chapter 9, section 18, is repealed and the following substituted:

"Patient access to clinical record

"36. Despite subsection 88(7) of schedule A to the Health Information Protection Act, 2003, this section, as it read immediately before that subsection came into force, continues to apply to a request for access that a patient made under this section before that subsection came into force."

Ms Perun: Just to explain, this is a purely transitional provision that was missed. There was a transitional provision in the Long-Term Care Act amendments that dealt with this issue. Basically, if a patient has made an access request under the Mental Health Act, it should just finish and the new rules shouldn't start kicking in. The access request should simply be finished under the old rules for that particular access request.

The Chair: Questions or comments? If none, those in favour of amendment 131? Against, if any? It is carried.

Amendment 132, a government motion.

Ms Wynne: I move that section 88 of schedule A to the bill, amending the Mental Health Act, be amended by adding the following subsection:

"(15.1) Clause 81(1)(c) of the act is repealed and the following substituted:

"(c) prescribing additional duties of officers designated and persons appointed under subsection 9(1) and governing communication concerning patients between officers designated and persons appointed under subsection 9(1) and health care providers;"

The Chair: Any clarification?

Ms Perun: This is the motion that is to address the issue raised by the Psychiatric Patient Advocate Office that their advocates have access to information about their clients in terms of being able to able to communicate with health care providers about their clients. These are section 9 appointments under the Mental Health Act, so therefore we thought that a better way of approaching this issue is to create a regulation, in consultation with that office, to address their ability to speak to providers. The proposal is to do a regulation to address their issue.

The Chair: Any questions or comments? If none, in favour of amendment 132? Against? It is carried.

Amendment 133, a government motion.

Ms Wynne: I move that subsection 88(16) of schedule A to the bill, amending section 81 of the Mental Health Act, be struck out.

The Chair: Any questions or comments?

Ms Wynne: Is there a clarification?

Ms Perun: Basically, there is already a change that was made in the Mental Health Act regulations at clause 81(1)(j). It provided for broader regulation-making powers in any event, so subsection 88(16) isn't necessary.

The Chair: Any other comments or questions? If none, those in favour of amendment 133? Against? It is carried.

Amendment 134, a government motion.

Ms Wynne: I move that subsection 88(19) of schedule A to the bill, re-enacting clause 81(1)(k.2) of the Mental Health Act, be struck out and the following substituted:

"(19) Clause 81(1)(k.2) of the act, as enacted by the Statutes of Ontario, 1996, chapter 2, section 72, is repealed."

Ms Perun: Clause (k.2) is already dealt with in the main bill. There's a general regulation-making power to govern the giving or refusing of consent by substitute decision-makers with respect to the information portions of the legislation, so it was not needed.

The Chair: Any questions or comments? Seeing none, in favour of amendment 134? Against? It is carried.

Amendment 135.

Ms Wynne: I move that subsection 88(20) of schedule A to the bill, amending clause 81(1)(k.3) of the Mental Health Act, be struck out and the following substituted:

"(20) Clause 81(1)(k.3) of the act, as re-enacted by the Statutes of Ontario, 2000, chapter 9, section 30, is amended by striking out 'clinical record under clause 35(3)(d.1), (e.3), (e.4) or (e.5)' at the end and substituting 'record of personal health information under subsection 35 (4)'".

The Chair: Any clarification?

Ms Perun: The reg-making power governs the retention of record information. It's also a technical amendment because the reference to "clinical record" had to be changed to "record of personal health information."

The Chair: Other questions or comments? If none, in favour of amendment 135? Against? It is carried.

Shall section 88 of schedule A, as amended, carry? It is carried.

Section 88.1: government motion 136.

1530

Ms Wynne: I move that schedule A to the bill be amended by adding the following section:

"Municipal Freedom of Information and Protection of Privacy Act

"Municipal Freedom of Information and Protection of Privacy Act

"88.1 Subsection 26(2) of the Municipal Freedom of Information and Protection of Privacy Act is repealed and the following substituted:

"Contents of report

"(2) A report made under subsection (1) shall specify,

"(a) the number of requests under this act or the Personal Health Information Protection Act, 2003 for access to records made to the institution;

"(b) the number of refusals by the head to disclose a record, the provisions of this act or the Personal Health Information Protection Act, 2003 under which disclosure was refused and the number of occasions on which each provision was invoked;

"(c) the number of uses or purposes for which personal information is disclosed if the use or purpose is not included in the statements of uses and purposes set forth under clauses 34(1)(d) and (e) or the written public statement provided under subsection 16(1) of the Personal Health Information Protection Act, 2003;

"(d) the amount of fees collected by the institution under section 45 or under subsection 52(9) of the Personal Health Information Protection Act, 2003; and

"(e) any other information indicating an effort by the institution to put into practice the purposes of this act or the Personal Health Information Protection Act, 2003."

The Chair: Questions or comments? I see none.

Those in favour of amendment 136? Against, if any? It is carried.

Section 89: amendment 137, a government motion.

Ms Wynne: I move that subsection 89(2) of schedule A to the bill, amending subsection 20.2(1) of the Nursing Homes Act, be struck out.

The Chair: Questions, comments or explanations? None?

Ms Perun: Three long-term care statutes have the same amendment. We had already dealt with one, with the Charitable Institutions Act and the homes for the aged, actually. This is the last one of the three, the Nursing Homes Act. Effectively, the amendment that was in there was inconsistent with the policy of the bill itself in terms of disclosure for the purposes of health care to be on an implied consent, as opposed to no consent.

The Chair: Any other comments or questions? I see none.

Those in favour of amendment 137? Against? I see none. It is carried.

Amendment 138, a government motion.

Ms Wynne: I move that subsection 89(4) of schedule A to the bill, amending section 38 of the Nursing Homes Act, be struck out and the following substituted:

"(4) Section 38 of the act, as amended by the Statutes of Ontario, 1993, chapter 2, section 43, 1994, chapter 26, section 75, 1996, chapter 2, section 74 and 1997, chapter 15, section 13, is amended by adding the following subsections:

"Exception

"(4) A regulation made under paragraph 18 of subsection (1) shall not apply to a record of personal health information within the meaning of the Personal Health Information Protection Act, 2003.

"Same

"(5) Despite subsection (4), a regulation made under paragraph 18 of subsection (1) that relates to the security, retention or disposal of a record of personal health information within the meaning of the Personal Health Information Protection Act, 2003 applies to the extent that the regulation is consistent with that act and the regulations made under it."

The Chair: Questions or comments? I see none.

Those in favour? Against, if any? It is carried.

Shall section 89 of schedule A, as amended, carry? Against? It is carried.

Shall section 90 of schedule A carry? Those in favour? Against? It is carried.

Section 90.1: amendment 139, a government motion.

Ms Wynne: I move that schedule A to the bill be amended by adding the following section:

"Ombudsman Act

"Ombudsman Act

"90.1 Section 19 of the Ombudsman Act is amended by adding the following subsection:

"Providing personal information despite privacy acts

"(3.l) A person who is subject to the Freedom of Information and Protection of Privacy Act or the Personal Health Information Protection Act, 2003 is not prevented by any provisions in those acts from providing personal information to the Ombudsman, when the Ombudsman requires the person to provide the information under subsection (1) or (2)."

The Chair: Questions or comments?

Seeing none, those in favour of amendment 139? Against? Seeing none, it is carried.

Sections 91, 92 and 93: Shall those three sections carry? They are carried.

Section 94: amendment number 140, a government motion.

Ms Wynne: I move that section 94 of schedule A to the bill, amending the Trillium Gift of Life Network Act, be amended by adding the following subsection:

(1.1) Section 5 of the act, as amended by the Statutes of Ontario, 1999, chapter 6, section 29, is amended by adding the following subsection:

"Consent is full authority, personal information

"(4.1) The authority to give consent under this section includes the authority to consent to the collection, use or disclosure of personal information that is necessary for, or ancillary to, a decision about the gift."

The Chair: Questions or comments? Seeing none, those in favour of amendment 140? Against, if any? Seeing none, it is carried.

Shall section 94 of schedule A carry, as amended? It is carried.

Section 95: amendment 141, an NDP motion.

Ms Martel: I gather there is going to be a change here and a recognition that we have to extend, probably to January 1, 2005. But there's a portion in the government bill that's not included in mine, so I will withdraw mine and let the government move theirs, then.

The Chair: So?

Ms Martel: I'm going to withdraw mine on the understanding that the government is going to be moving an amendment that will substitute July 1, 2004, with January 1, 2005, which is what I wanted to have done. But there is an additional section that I don't have that they do. So I will allow the government—I withdraw mine.

The Chair: So you'll withdraw this one. Ms Martel withdraws amendment 141.

We'll move on to amendment 142, a PC amendment.

Mrs Witmer: I move that section 95 of schedule A to the bill be struck out and the following substituted:

"Commencement

"95. This schedule comes into force on January 1, 2005."

The Chair: Questions or comments? Seeing none, those in favour of the PC motion? Against? Five against, one abstains, so the motion is defeated.

Amendment 143, a government motion.

Mr Fonseca: I move that section 95 of schedule A to the bill be struck out and the following substituted:

"Commencement

"95(1) This section and sections 71, 72 and 96 come into force on the day the Health Information Protection Act, 2003 receives royal assent.

"Same

"(2) Sections 1 to 70 and 73 to 94 come into force on September 1, 2004."

Ms Martel: Chair, I'm going to move an amendment to subsection 95(2), then, which would state that, "Sections 1 to 70 and 73 to 94 come into force on January 1, 2005."

The Chair: So we have an amendment to the amendment, moved by Ms Martel. We'll vote. Any questions or comments on that?

Mrs Witmer: Obviously, that was the intent of our motion, which was voted down. We were told repeatedly by people who appeared before this committee that the July date that was being suggested, July 1, 2004, was totally unrealistic and that at least another six months was required. So obviously, we now are going to be supporting that, with the amendment to the amendment. OK, we'll go as is, but certainly that was the intention of our motion.

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The Chair: Any other comments?

Ms Wynne: Just to clarify, there was another piece to this motion. That was why we went with this motion, with the understanding that we were open to January 1.

The Chair: Other questions or comments?

If not, we'll vote on the amendment to the amendment moved by Ms Martel. In favour? Unanimous. It is carried as amended.

We'll move the amendment, as amended. In favour? It is carried.

Shall section 95 of schedule A, as amended, carry? Carried.

Shall Section 96 of schedule A carry? Against? Carried.

Shall schedule A, as amended, carry? Against? It is carried.

Schedule B, Quality of Care Information Protection Act, 2003, section 1: There is amendment 144, a government amendment.

Mr Fonseca: I move that clauses (b) and (c) of the definition of "quality of care committee" in section 1 of the Quality of Care Information Protection Act, 2003 be struck out and the following substituted:

"(b) that meets the prescribed criteria, if any, and that is designated, in a manner that may be prescribed by the regulations, as a quality of care committee by the health facility or entity that established, appointed or approved it, and

"(c) whose functions are to carry on activities for the purpose of studying, assessing or evaluating the provision of health care with a view to improving the quality of the health care or the level of skill, knowledge and competence of the persons who provide the health care, where the health care is provided in or by the health facility or the entity that established, appointed or approved the committee or the health facilities or entities that are described in the designation of the committee; ("comité de la qualité des soins")

The Chair: Questions or comments?

Ms Martel: Just a quick question. Is this meant to cover off quality of care committees in long-term-care facilities and that information that the regulated professions hold? Because we were asked to change that so their information as well would not be disclosed. This is what this does, I'm assuming?

Mr Orr: This does not relate to the issue of long-term-care facilities or the regulated professions. The issue of long-term-care facilities is left to the regulations as to who else will be covered, apart from public hospitals and people who are defined as health facilities under this act.

As far as the regulated health professions go, there is a complementary amendment being added to the Quality of Care Information Protection Act, which will address quality of care in that context.

The changes to this section are quite minimal. To clause (b) we're adding "that meets the prescribed criteria," which simply allows the government to exercise a little more control over what can be considered to be a quality of care committee to prevent the protections of this act from applying in an overly broad manner.

In clause (c) there's the addition of the words, around the middle of the clause, that said "where the health care is provided in or by the health facility." It used to just say "by the health facility" and we've added the words "in or by the health facility." It's just a little more comprehensive.

Ms Martel: Thanks.

The Chair: Other questions or comments? Seeing none, those in favour of amendment 144? Against? It is carried.

Amendment 145, a government motion.

Mr Fonseca: I move that clause (e) of the definition of "quality of care information" in section 1 of the Quality of Care Information Protection Act, 2003 be struck out and the following substituted:

"(e) information contained in a record that is required by law to be created or to be maintained,"

The Chair: Questions or comments? Seeing none, in favour? Against? It is carried.

Amendment 146, a government motion.

Mr Fonseca: I move that clause (f) of the definition of "quality of care information" in section 1 of the Quality of Care Information Protection Act, 2003 be amended by striking out "information contained in a record" at the beginning and substituting "facts contained in a record".

The Chair: Questions or comments? Seeing none, in favour of the amendment? Against? It is carried.

Amendment 147, a government motion.

Mr Fonseca: I move that clause (a) of the definition of "witness" in section 1 of the Quality of Care Information Protection Act, 2003 be struck out and the following substituted:

"(a) is examined or cross-examined for discovery, either orally or in writing,"

The Chair: Questions or comments? Seeing none, in favour of the amendment? Against? It is carried.

Shall section 1 of schedule B, as amended, carry? Those in favour? Against? It is carried.

Section 2: amendment 148, a PC motion.

Mrs Witmer: In light of our conversation, we would withdraw this motion.

The Chair: Mrs Witmer withdraws this motion.

Shall section 2 of schedule B carry? In favour? Getting tired, I guess. Against? Carried.

Amendment 149, an NDP motion.

Ms Martel: This was to try and ensure that quality assurance programs of the federated colleges were protected. You're doing this somewhere else?

Ms Perun: In the government motions later on—

Ms Martel: I'm glad that you're accepting my ideas, so I'll withdraw and we can move to it later on.

The Chair: Ms Martel withdraws amendment 149.

Mr Fonseca: Mr Chair, if I could request a 10-minute break.

The Chair: Before we move on to section 3?

Mr Fonseca: Yes.

The Chair: Just a second, before we do that, did we say we would adjourn at four o'clock? We need a unanimous decision if we carry on past four o'clock.

Mr Fonseca: I would request an extension.

The Chair: There's not much left. It's just that we're going past four o'clock with a 10-minute recess.

You want a 10-minute recess; is that what you're asking for?

Mr Fonseca: Yes.

The Chair: Do we agree to carry on until 4:30 afterwards? We don't need a motion for that? We'll carry on, even though it's after four o'clock.

Mr Fonseca: Thank you.

The Chair: We'll recess for 10 minutes.

The committee recessed from 1548 to 1559.

The Chair: Now we'll move on to—is it amendment 149? Have we done that one? We've done it.

Then we've got section 3. Shall section 3 of schedule B carry? We got a rest there. We should be able to vote now. In favour? Against? It is carried.

Shall section 4 of schedule B carry? Against? It is carried.

Shall section 5 of schedule B carry? It is carried.

Shall section 6 of schedule B carry? Carried

Shall section 7 of schedule B carry? Carried.

Section 8: amendment 150, a government motion.

Mr Fonseca: I move that subsection 8(3) of the Quality of Care Information Protection Act, 2003 be amended by striking out "for damages".

The Chair: Questions or comments? Seeing none, in favour? Against, if any? It is carried.

Shall section 8 of schedule B carry? Against? It is carried.

Clerk of the Committee: As amended.

The Chair: As amended, yes. Thank you.

Section 9: It's government motion 151.

Mr Fonseca: I move that subsection 9(1) of the Quality of Care Information Protection Act, 2003 be amended by adding the following clauses:

"(c.l) prescribing criteria that a body must meet to be designated as a quality of care committee and the manner in which a quality of care committee may be designated by the heath facility or entity that established, appointed or approved it;

"(c.2) specifying a provision of another act or its regulations that prevails over this act or its regulations for the purpose of section 2."

The Chair: Questions or comments? I see none. All in favour of amendment 151? Against, if any? It is carried.

Shall section 9 of schedule B, as amended, carry? It is carried.

Ms Martel: Can I interrupt? I'm sorry. It's something I've missed; my apologies to the committee. This goes back to the offence section, section 7. We had a discussion in the other bill about "guilty of an offence" and "guilty of an offence." In this section, you actually have the same language. I'm looking on page 89 of the bill, subsections 7(2) and 7(3). In penalties, "A person who is guilty of an offence" and then under the directors, you have, "If a corporation is guilty of an offence." I'm just wondering why you used the same terminology in schedule B, and in schedule A, when we came to the penalty section, you actually had different terminology.

Mr Orr: I don't think we can really answer that here. I think we're going to have to look at it.

Ms Martel: I just found it; it's on page 62 of schedule A. In the penalty section you have, "A person who is guilty" and then in "Officers" you have, "If a corporation commits an offence."

Mr Orr: I understand what you're saying. I think there is an inconsistency there, and we're going to have to look at it.

The Chair: Section 10: Shall section 10 of schedule B carry? Against? It is carried.

Section 10.1: amendment 152, a PC amendment.

Mrs Witmer: In light of the discussions and changes made to the regulated health professions' concerns, I withdraw that amendment.

The Chair: So amendment 152 has been withdrawn by Mrs Witmer.

Amendment 153, a government motion.

Mr Fonseca: I move that schedule B to the bill be amended by adding the following section:

"Amendments to Regulated Health Professions Act, 1991

"Regulated Health Professions Act, 1991

"10.1 (1) Subsection 83(5) of schedule 2 to the Regulated Health Professions Act, 1991, as enacted by the Statutes of Ontario, 1998, chapter 18, schedule G, section 19, is repealed.

"(2) Schedule 2 to the act is amended by adding the following section:

"Definitions

"83.1(1) In this section,

"'disclose' means, with respect to quality assurance information, to provide or make the information available to a person who is not,

"(a) a member of the quality assurance committee,

"(b) an assessor appointed by the committee, a person engaged on its behalf such as a mentor or a person conducting an assessment program on its behalf, or

"(c) a person providing administrative support to the committee or the registrar or the committee's legal counsel,

"and 'disclosure' has a corresponding meaning; ('divulguer,' 'divulgation')

"'proceeding' includes a proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a college under the Regulated Health Professions Act, 1991, a committee of the board under the Drugless Practitioners Act, a committee of the college under the Social Work and Social Service Work Act, 1998, an arbitrator or a mediator, but does not include any activities carried on by the quality assurance committee; ('instance')

"'quality assurance information' means information that,

"(a) is collected by or prepared for the quality assurance committee for the sole or primary purpose of assisting the committee in carrying out its functions,

"(b) relates solely or primarily to any activity that the quality assurance committee carries on as part of its functions,

"(c) is prepared by a member or on behalf of a member solely or primarily for the purpose of complying with the requirements of the prescribed quality assurance program,

"(d) is provided to the quality assurance committee under subsection (3), or

"(e) satisfies the criteria for quality assurance information specified by the regulations,

"but does not include,

"(f) the name of a member and allegations that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated,

"(g) information that was referred to the quality assurance committee from another committee of the college or the board, or

"(h) information that the regulations specify is not quality assurance information; ('')

"'witness' means a person, whether or not a party to a proceeding, who, in the course of the proceeding,

"(a) is examined for discovery, either orally or in writing,

"(b) makes an affidavit, or

"(c) is competent or compellable to be examined or cross-examined or to produce a document, whether under oath or not. ('témoin')

"Conflict

"(2) In the event of a conflict between this section and a provision under any other act, this section prevails unless it specifically provides otherwise.

"Disclosure to quality assurance committee

"(3) Despite the Personal Health Information Protection Act, 2003, a person may disclose any information to the Quality Assurance Committee for the purposes of the committee.

"Quality assurance information

"(4) Despite the Personal Health Information Protection Act, 2003, no person shall disclose quality assurance information except as permitted by the Regulated Health Professions Act, 1991, including the Health Professions Procedural Code that is schedule 2 to that act or an act named in schedule 1 to that act or regulations or by-laws made under the Regulated Health Professions Act, 1991 or under an act named in schedule 1 to that act.

"Non-disclosure in proceeding

"(5) No person shall ask a witness and no court or other body conducting a proceeding shall permit or require a witness in the proceeding to disclose quality assurance information except as permitted or required by the provisions relating to the quality assurance program.

"Non-admissibility of evidence

"(6) Quality assurance information is not admissible in evidence in a proceeding.

"Non-retaliation

"(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to a quality assurance committee under subsection (3).

"Immunity

"(8) No action or other proceeding may be instituted against a person who in good faith discloses information to a quality assurance committee at the request of the committee or for the purposes of assisting the committee in carrying out its functions.

"(3) Subsection 95(1) of schedule 2 to the act, as reenacted by the Statutes of Ontario, 1998, chapter 18, schedule G, section 23, is amended by adding the following clauses:

"(r.l) specifying criteria for quality assurance information for the purposes of subsection 83.1(1);

"(r.2) specifying information that is not quality assurance information for the purposes of subsection 83.1(1);"

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The Chair: Are there any comments or questions? Seeing none, all those in favour of amendment 153? Against, if any? I see none. It is carried.

Ms Wynne: Sorry, I lost track. Did we vote on amendments 150 and 151?

The Chair: Yes, we did.

Ms Wynne: OK. Sorry.

The Chair: Section 11: amendment 154, a government motion.

Mr Fonseca: I move that section 11 of schedule B to the bill be struck out and the following substituted:

"Commencement

"11(1) This section and sections 9, 10 and 12 come into force on the day the Health Information Protection Act, 2003 receives Royal Assent.

"Same

"(2) Sections 1 to 8 come into force on September 1, 2004."

The Chair: Questions or comments?

Interjection.

Ms Martel: I'd probably move an amendment because we are not going to be consistent with schedule A. So I move an amendment that it comes into force on January 1, 2005.

The Chair: We have an amendment to the amendment that sections 1 to 8 come into force on January 1, 2005. Questions or comments? If none, we will vote on the amendment to the amendment. Those in favour of the amendment to the amendment? Against? There aren't any. It's unanimous.

Now we'll vote on the amendment, as amended. All in favour? Carried.

Shall section 11 of schedule B carry, as amended? Against? It is carried.

Section 12: Shall section 12 of schedule B carry? Against? Seeing none, it is carried.

Shall schedule B, as amended, carry? Against? It is carried.

So we've got to go back to the actual bill. We are now dealing with the bill itself. Section 1, which is "The Personal Health Information Protection Act, 2003 as set out in schedule A, is hereby enacted." All in favour? Agreed? Against? It is carried.

Section 2: "The Quality of Care Information Protection Act, 2003, as set out in schedule B, is hereby enacted." All in favour? Carried.

Section 3: "Commencement:

"3(1) Subject to subsections (2) and (3), this act comes into force on the day it receives Royal Assent."

Shall it carry? All agreed? Carried.

Section 4: "The short title of this act is the Health Information Protection Act, 2003." Shall section 4 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 31, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

This concludes the clause-by-clause. I thank you very much for your co-operation. We've done it in one day instead of three days. Thank you to the staff, also.

So there won't be any meeting tomorrow and Wednesday. Once again, to all the minister's staff, thank you very much for your support and the explanations.

The committee adjourned at 1615.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

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Ms Shelley Martel (Nickel Belt ND)
Mrs Elizabeth Witmer (Kitchener-Waterloo PC)

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Ministry of Health and Long-Term Care
Mr Michael Orr and Ms Halyna Perun, legislative counsel,
Ministry of Health and Long-Term Care

Clerk / Greffière
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Ministry of the Attorney General