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Official Report of Debates (Hansard)

Tuesday 9 March 2004

Journal des débats (Hansard)

Mardi 9 mars 2004

Standing committee on justice and social policy

Commitment to the Future of Medicare Act, 2003

Comité permanent de la justice et des affaires sociales

Loi de 2003 sur l'engagement d'assurer l'avenir de l'assurance-santé

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

Tuesday 9 March 2004

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE ET DES AFFAIRES SOCIALES

Mardi 9 mars 2004

The committee met at 1003 in room 151.

COMMITMENT TO THE FUTURE OF MEDICARE ACT, 2003

LOI DE 2003 SUR L'ENGAGEMENT D'ASSURER L'AVENIR DE L'ASSURANCE-SANTÉ

Consideration of 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 / Projet de loi 8, Loi créant le Conseil ontarien de la qualité des services de santé, édictant une nouvelle loi relative à l'accessibilité aux services de santé et abrogeant la Loi sur l'accessibilité aux services de santé, prévoyant l'imputabilité du secteur des services de santé et modifiant la Loi sur l'assurance-santé.

The Chair (Mr Kevin Daniel Flynn): It's a few minutes after 10 o'clock. Could we come to order? Welcome back, all.

We're here to consider Bill 8. We have some late amendments from the opposition, and the government is withdrawing one amendment and replacing that with another. I'd like at this point to deal with that and ask if there is unanimous consent to accept the amendments. OK. Thank you.

Just so we're all on the same page and the same package, the package we are working from for the amendments is the one that is numbered at the top. If you go to the top right-hand corner, you'll see page 30, page 20 or whatever it is. That's the package that we're working from. The clerk is distributing the amendment from the government replacing the one amendment with this. The clerk has also put the amendments in the sequence in which I anticipate the committee will be disposed to deal with them.

We are going to start with five-minute statements from each of the three parties. We'll start with the government.

Ms Monique Smith (Nipissing): We're delighted to be here today to do the clause-by-clause review on Bill 8. I will not take too much of our time today with an opening statement, as we have a lot of work ahead of us. I would just state that we were happy to take this bill out after first reading, recognizing that it needed some work. We said from the very beginning—the minister was here on the very first day and noted that we would be bringing extensive amendments, and we are doing that today.

We have had extensive consultation with stakeholders across the province. The amendments that the government will be presenting today reflect the changes that were suggested by many of the stakeholders and address a number of the concerns that have been raised. We are pleased to go through this clause-by-clause exercise, and we believe the legislation as it will stand at the end of this review will be stronger and will reflect the themes that we hold dear in trying to protect medicare in Ontario.

Mrs Elizabeth Witmer (Kitchener-Waterloo): We've certainly appreciated the opportunity to participate in the analysis of this bill. I want to thank all of the deputants who appeared before the committee. I think we received some excellent information and certainly some great recommendations.

Leading up to today, we haven't had a lot of time to consider the government's amendments, but at first blush, although there certainly has been discussion and conversation and recommendations, I do believe that the bill still does fall short when it comes to section 3, the accountability section. I still have some very serious concerns, as I know our stakeholders do, about the drafting of the provisions related to accountability, and the fact that, at the end of the day, hospitals will still be forced to sign performance agreements.

I would hope that the government, after we finish clause-by-clause, would be amenable to sending this bill back to the stakeholders for further consultation of these changes, because I don't believe that the bill goes far enough in responding to the concerns when it comes to the accountability agreements. I know there are reservations for hospitals, whether CEOs or boards. I know that certainly the unions, the employees, are still really very fearful as to the power that the minister or the ministry would have in regard to these accountability agreements.

My recommendation would be that if we really want to make sure that we are reflecting the input, if we want to make sure that people have sufficient time to consider these responses from the government, we would allow for further public consultation on this bill, particularly as it pertains to section 3, the accountability section.

Ms Shelley Martel (Nickel Belt): Let me make some comments about the process itself and some comments about the bill.

First, about the process, there is no doubt that this was to be a signature piece for the government. It was a bill that was to set a different tone, a bill that would set a different direction, that would set the new government apart from the old in terms of its dealing with its stakeholders and the public, moving from what has been a very confrontational past eight years to one of co-operation in moving forward. I think it was no accident that the bill was introduced on the first anniversary of the release of the Romanow report, to try, in public relations terms, to give a sense to the people that the government was really serious about protecting and enhancing and moving forward on medicare.

It was also not an accident in that context of a public relations exercise that there was quite a big to-do at Hart House the morning of the day the bill was introduced. The Premier was there, the Minister of Health and Long-Term Care was there and Commissioner Romanow was there. Everybody had great things to say about medicare and how this bill was going to support it.

The party ended when the bill was introduced. The very same weekend that the bill was introduced, the Ontario Medical Association was on the phone to the minister's office to say, "What are you doing? Look at the tone of this? Penalties—we're going to be in jail for a year for administrative mistakes that we've made. Look at the penalties." The OHA was soon on the phone after that to talk about section 3 and the overwhelming and incredible powers that were proposed for the minister. So what became a signature piece for the government rapidly fell apart.

That has certainly been confirmed during the course of the public hearings. Far from a signature piece, I think regrettably for the government, it has been anything but. The tone continued, the kind of confrontational approach that we've had to endure under the Tories. That's not where the government wanted to be, but is surely where they ended up.

The process is such that the bill is so flawed that we should have had a new bill. It is not time-allocated, although I appreciate that the minister needs this bill now in order to deal with his hospital funding announcement. We heard so much concern—frankly we heard the concern from the minister on day one that this bill would have to be amended—that we should not be here today. The government, after hearing from people, should have gone back, rewritten the bill and, frankly, introduced a new bill when we sit again. That would have been a much better process.

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I say that because there has been a mad rush to fix this bill. There were consultations going on extensively between the minister and the OHA on Thursday morning. There were conversations between the College of Physicians and Surgeons and the ministry on Friday afternoon. There were people who worked over the weekend to put the amendments together. We received a package late last night and even another change this morning. That's a bad way to do business. It reminds me of some tax reform changes that the previous government made in a mad rush, and for the next seven sessions that we sat—the sessions referring to March to June—and then in the fall, the government had to bring forward legislation to fix the original bill. Seven times we had to deal with fixing the original bill because it was done in a mad rush and not done properly.

I say to the government, I think you would have been much better served after having heard from people, instead of engaging in the mad rush to be here today, to actually have gone back and reintroduced a new bill, because I think we are going to be here again and again, fixing some of the sections that you have tried to fix, even up to and over the course of yesterday.

Because the bill has been so flawed and because I worry about the process from here on in, which I think will be a process where we will have to be fixing things that have been missed, we made a decision not to put forward amendments. We think the government would have been much better served, the process would have been much better served, if the government had taken its time after having heard everything—and there was a great deal to hear and most of it was negative. The government would have been much better served to actually bring in a new bill for us to consider when the House starts again, because we are going to have to go to second reading, we are going to be back in clause-by-clause—I'm quite certain of it—and we are going to have public hearings again. We could have done all that with a new bill, instead of the rush that we're trying to deal with today.

With respect to the bill itself, the government members have heard before and they're going to hear again, probably a few more times before this bill is over, that there is, in my opinion and the opinion of New Democrats, a huge disconnect, a great divide between what the minister says the bill will do to support and enhance and promote medicare and what the contents of the bill actually put in place. Frankly, the contents of the bill do not, in my opinion, either support or enhance medicare in the way I think we, as New Democrats, should. Let me give you some examples.

In the preamble, which of course everybody can support and I've said this before as well, it says "our system of publicly funded health services"—that's what we want to protect. At the same time, we have a government that is moving forward to privately fund hospitals in the province of Ontario. That doesn't make any sense economically, because it's much more expensive for us to privately fund hospitals in this province than it would be to publicly fund them, which is the traditional way. Frankly, once you open the door to privately fund hospitals, then you open the door to allow private companies to privately manage the system as well.

I look at the example of the private MRI/CT scan clinics, which the government said they were going to shut down. They have not been shut down. Competitive bidding in home care, we heard from presenters before this committee, is doing great damage—nothing in the

bill to shut that down. The bill talks about ending user fees. At the same time, the finance minister is musing openly about ending universality of the drug plan.

So we have a huge disconnect, a huge divide between what the bill purports to do and what the contents actually do. For that reason, I have not been supportive. And unless and until there is a change—and I doubt there will be—we will not be supportive.

The Chair: Let's proceed then. Are there any comments, questions or amendments, and if so, to which sections? It's a question I'm compelled to ask, but I think we know the answer to that.

Mr Frank Klees (Oak Ridges): If I might just make one comment. As you know, I participated in these hearings over the last few weeks, and you've heard—and the record will show—that I, on a number of occasions, indicated that, because of how badly flawed this bill is, it would be my personal view as well that it would no doubt have been in everyone's interest if this bill was scrapped and we started over again. Most of us, I think, agree with the principles that were set out in the preamble. I can tell you, having had an opportunity to review the amendments, while we ourselves did what we could—we are putting forward amendments today that will soften the blow somewhat, nevertheless, I'd like the record to show that my personal view is that it would be in the public interest if this bill were scrapped, that we started over again doing the right thing; that is, draft a piece of legislation that would be consistent with the principles set out in the preamble. I don't believe that, even with the amendments we'll get there. I want the record to reflect that.

The minister started out in this hearing room presenting a bill that, it was obvious to us, he either hadn't read or didn't understand at the time. Halfway through his presentation, he made it clear that the tone of the bill was not what it should be. In successive comments he made following that, he also made it clear that he would do what he could to fix this bill. He went from making apologies to being embarrassed about the state of the bill. Now we see that he has fallen prostrate to the stakeholders, to the point where we have probably 10 pounds of amendments here that will take us some time to get through. It was a valiant effort on his part, but he didn't do the right thing. He should have done the right thing, and will have to bear with the government as they force these amendments and this bill through, which I would say is inconsistent with the commitment the Premier made on the election campaign that he would do the business of government differently. We're very disappointed in that.

The Chair: Thank you, Mr Klees.

If everyone will turn to their package, the first motion that I have placed before me is a PC motion. It would be a new section 0.1.

Mrs Witmer: I move that the bill be amended by adding the following section:

"Public interest

"0.1 In acting under this act, the minister must act in the public interest."

There was a tremendous amount of concern surrounding this bill, and certainly much of it focused on the fact that there was no reference made whatsoever for the minister to ever have to act in the public interest. So the inclusion of this type of wording would specifically require the minister, as the designate of the Premier in health care matters, to obviously always and only act in the public interest.

This is absolutely necessary to preserve public accountability, so we believe that this amendment needs to be made. Otherwise, it's going to undermine public confidence in the health care system, which this bill has done to a large degree anyway, based on the manner in which it has been introduced. We also know that under the Public Hospitals Act the minister is bound to act in the public interest, so we found it a grave and serious omission that in this piece of legislation there would be no reference to acting in the public interest. This may be an indication of the sloppy manner in which the bill was originally drafted.

The Chair: Any further debate on the amendment?

Ms Martel: Chair, I'm looking at the Draft Framework—Potential Changes that the minister gave to the committee via the parliamentary assistant a couple of weeks ago. In the preamble it says, "Include reference to ... 'public interest' in the preamble." Is that coming later, or is it not coming at all in this section?

Ms Smith: I'd like to address both concerns raised by Ms Witmer and Ms Martel. "Public interest" will be incorporated into subsection 20(2), as well as in the preamble in the government amendments that we are proposing. In fact, it goes further than the amendment that you're proposing here, Ms Witmer.

1020

Mrs Witmer: Would you give us the page? That's part of the problem. Because this bill was so poorly drafted originally, and we didn't get these amendments in time to cross-reference, could you tell us where it is so that we could make a decision?

Ms Smith: On page 39 of the package that you have before you this morning, you'll see subsection 20(2), and on page 80 of the package you have before you, you'll see an amendment to preamble paragraph 7.

Ms Martel: Can I ask why the changes to the preamble are coming at the end? Because we're going to pass the preamble and then we're going to get to it later on.

The Chair: I believe we deal with the preamble at the end of our proceedings. I'll check with the clerk.

Interjection.

The Chair: Just trying to abide by the rules.

Any further debate on the amendment?

Those in favour? Those opposed? That amendment is lost.

We move on to page 2. This is a government motion.

Ms Smith: I move that section 1 of the bill be amended by adding the following definition:

"health system organization" means,

"(a) any corporation, agency or entity that represents the interests of persons who are part of the health sector and whose main purpose is advocacy for the interest of those persons,

"(b) the college of a health profession or group of health professions as defined under the Regulated Health Professions Act, 1991, or

"(c) a health resource provider within the meaning of part III, ("organisme de santé").

The Chair: Speaking to the motion?

Ms Martel: Could I just ask, for the purpose of the rest of the day, if the parliamentary assistant is going to speak to the changes or if staff are? Some of them might be clear. I understand that clearly this is a definition, but I'd be interested in knowing, is it affecting some other parts inside, either to clarify that people are included or excluded from the provisions of the bill?

Ms Smith: We do have staff available. If there are any specific questions, I'm happy to call them up. If there's a specific question on this section, I'm happy to address it.

Ms Martel: Can I ask, then, the purpose of a new definition? I don't remember this coming forward as a recommendation from any particular group. Is it designed to fix something else that's coming?

The Chair: Ms Smith, would you like to answer that, or would you like to call somebody forward?

Ms Smith: I think I can address it, although if you need more detail, Ms Martel, I'm happy to get you more detail. What this does is address the concerns surrounding membership on the health quality council and the fact that we were going to limit membership and preclude those who represent stakeholder groups specifically from being on the council.

Ms Martel: So there will be a change later on as well in the section where it looked like hospital boards were going to be excluded, or members of hospital boards?

Ms Smith: This particular amendment actually continues to exclude members of hospital boards and CEOs of hospitals. It also excludes stakeholder groups and members of colleges. If a present board member wishes to sit on the council, they can resign from a hospital board and be a member of the council, but the dual role will not be allowed under this amendment.

Ms Martel: Can I just ask the reason for that? Let me make this comment. The people who sit on hospital boards do that voluntarily. It's not a paid position. So I'd have much more difficulty seeing a conflict of interest, even in its broadest sense, in that regard than I would, obviously, for someone who has a paid position, for example at the OHA, which is very clearly an association set up to lobby. I think there is a distinction, and I'm wondering why the government isn't making that distinction.

The Chair: That could be the essence of the debate. Ms Smith, did you have an answer to that, or did you want to go to staff?

Ms Smith: I believe the reason we would be requesting that someone who presently sits on a board not sit on that board is that they come representing a broader perspective and that they not feel they are there representing their particular hospital interest. The people we want on the council are people who reflect a broader interest, and we do want to include the patient population and the hospitals, but we don't want them absolutely representing one particular institution. So we would ask that they resign their voluntary position on a board to sit on the council. We think they'll be able to make a contribution that way and not feel fettered by their responsibilities to their particular board.

Ms Martel: If I might, I guess I disagree with where the government is going. I feel the sense that if you are a—I don't want to use the words "paid lobbyist," because I'm not trying to undermine anyone, but in some ways, if you are representing an association in a paid position, that's what you do. We're talking about volunteer people who have a lot of expertise and who are going to then have to make a decision: Do they not continue in the work and the contribution they can make on a hospital board on behalf of their community in order to do this other work on behalf of the government?

I'm not trying to denigrate that job, but I'm just not sure why we're asking people to do that and why they can't play a dual role. If I thought there was some kind of conflict in terms of money, I would make a vociferous argument to have them off, but I just think the government is going a bit far down the road in terms of who can participate and who can't. I think it's not going to serve people well if you go to the extreme that someone who is a volunteer and has a long association of working for the community and has a contribution to make on a hospital board has to forgo that in order to participate on the council.

Mrs Witmer: I would certainly concur with the comments that have been made by Ms Martel. I think it would be grossly unfair to the volunteer, who oftentimes has better knowledge, first-hand knowledge, of the health system than many, many other people in paid positions, who sometimes are there lobbying on behalf of their organization. I think to deny them the opportunity to participate here is very unfair.

Mr Klees: I'd like to ask the parliamentary assistant, specifically in this amendment, which part of it excludes members of a hospital board?

Ms Smith: I'm sorry. Which part of this amendment excludes a member of a hospital board?

Mr Klees: Yes.

Ms Smith: Clause (c), "a health resource provider within the meaning of part III." It must be read in conjunction with the amendment proposed on page 5. The amendment on page 5 refers to subsection 2(7) of the bill.

Mr Klees: Sorry. You're going to have to help me with this.

The Chair: Can anyone elaborate on that a little bit? Ms Smith?

Ms Smith: Certainly. Subsection 2(7) of the original legislation reads, "A person who is a member of the board or a senior staff member of a health system organization may not be a member of the council." We

will be amending that to include "or the chief executive officer or an officer."

Mr Klees: Thank you very much. Chair, I want to as well register my concern about this. If there is anyone at all in our communities who understands the health care system, and particularly the functions of a hospital, surely it's someone who sits on the board of a hospital. These are not professionals in the health care system, as a rule. I don't have a problem if you want to exclude health care providers directly who sit on boards, but surely there could have been an exception made for volunteers who sit on these hospital boards, who often bring very broad business experience, who often bring a broader community perspective, and who, I would suggest to you, as members on the board, see their role as advocating for the public interest, certainly not advocating for a particular health care professional discipline on that board. I believe the government is excluding individuals who could serve the public interest very well, and I want to register my strong objection to this.

The Chair: Are there any further speakers?

Seeing none, those in favour of the motion? Those opposed to the motion? That motion is carried.

Shall section 1, as amended, carry? All in favour? Those opposed? That motion is also carried.

We move to page 3: Ms Witmer.

1030

Mrs Witmer: I move that the bill be amended by adding the following section:

"Adequate funding

"1.1. The government of Ontario is obligated to provide adequate funding for the health system."

This bill, when it was introduced, purported to do away with two-tier health and queue-jumping, and made all sorts of other claims. The reality is that when we talk about queue-jumping and two-tier health, those aren't the problem, they're symptoms of the problem. The problem is the lack of adequate funding for the health system. For example, when people can't have a cataract procedure done in a timely fashion, if they can't have that hip replaced, if we don't have sufficient financial resources to pay for health practitioners or to pay for services, obviously things happen that really are quite unintended.

I believe the government has an obligation. If they're going to hold the hospitals in this province accountable—if they want them to enter into accountability agreements—they also have to ensure that the hospitals receive adequate funding in order that they can deliver those services to the people who are in desperate need. There's no point having provisions in an accountability agreement that cannot be achieved if the hospitals are not getting adequate funding. I believe there is an overriding responsibility on the part of the government to let the hospitals know ahead of time as to the amount of money they can anticipate they're going to receive over a three-year period, and they're going to have to fund the system adequately. This bill does not make any commitment to fund the system in an adequate manner in order that the provisions of the accountability agreements can be met.

The Chair: Any further speakers?

Mr Klees: I'd like to support my colleague in this amendment. I'd like to speak briefly on behalf of those hospitals that are located particularly in high-growth areas within our province, York region being one of them, and in fact the entire GTA. It's one thing, as Ms Witmer indicated, for the ministry to say, "You have to bring in your budget within certain parameters." If the government, the Ministry of Health, is not giving due consideration to the increased pressure on that hospital organization, this bill is simply going to confuse issues and will not do what it was intended to do to begin with.

This is the other side of the accountability issue. It's one thing to hold hospitals accountable, but what is going to hold the government accountable? Again, I believe that without this amendment, without putting this consideration into effect in this bill, we have a serious problem on the horizon.

Ms Smith: I believe this motion is outside the scope of this legislation. This legislation does not deal directly with funding, and "adequate funding" is such a broad term that I think it would be impossible to define. We'll be voting against this motion, as it is not actually included in the scope of this legislation.

Ms Martel: We heard from many representatives, particularly of hospital boards, who said that accountability is a two-way street. If the government wants to force hospital boards to be accountable in terms of the services they provide and account for the funding for the same, then the government, by the same token, has to be accountable in terms of providing the necessary funds to make sure those services and programs can be offered. So I believe the issue of funding is at the heart of the accountability agreements, and it does have to be a two-way street.

If we're going to hold hospitals accountable for the money we provide them and the services they then provide to the community as a result, the government also has to be held accountable to ensure that the necessary funding is in place to allow that to happen. I think funding is an integral part not only of section 3 but also of supporting medicare itself, so I support the motion.

The Chair: Are there any further speakers?

Seeing none, those in favour? Those opposed? That motion is lost.

We move on to page 4: Ms Witmer.

Mrs Witmer: I move that the bill be amended by adding the following section:

"Protection of personal information

"1.1 Where any provision of this act conflicts with any provision of a law of Canada or another law of Ontario concerning the protection of personal information, the law of Canada or the other law of Ontario prevails."

We want to be absolutely certain that the personal information of individuals in this province is protected, and we want to ensure the supremacy of Bill 31, in order that Ontarians can be guaranteed—as you know, this bill, as originally written, gave huge, unprecedented power to

the minister to access personal information. I think the government realized they had made a terrible mistake. I think it speaks to the hasty manner in which this legislation was drafted. We just want to be absolutely certain that any private information related to personal health information of Ontarians is protected and that Bill 31 will be supreme.

The Chair: Any further speakers?

Ms Smith: Bill 31 will revoke subsections 14(6) and 15(3) of Bill 8, so there's no longer any question that Bill 31 prevails over Bill 8. As a result, there's no conflict between the bills. If there were a conflict between Bills 8 and 31, Bill 31 would indeed prevail. I hope that reassures Ms Witmer of her concerns with respect to the supremacy of Bill 31.

With respect to federal legislation, it should not prevail in an area of provincial jurisdiction.

Mrs Witmer: What were the motions that would speak to that?

Ms Smith: I believe it's part of Bill 31. It's the way Bill 31 is written. If you'd like a more technical briefing on that, I can have our legal counsel advise you.

Mrs Witmer: But there are no amendments within this legislation. Are you revoking parts of this legislation?

Ms Smith: No. It's the way this bill is drafted in tandem with Bill 31.

Mr Klees: Mr Chair, I have a hard time simply accepting that.

The Chair: Let's be clear. Ms Witmer, you had the floor. Do you need a further explanation? If not, I will go to Mr Klees.

Mrs Witmer: Yes, I would like a staff explanation.

Ms Smith: Certainly. Ms Witmer, if you would turn to page 21 with respect to section 13, I'm happy to have legal counsel advise you on this.

Mrs Witmer: And perhaps they could just review that with us.

The Chair: Absolutely. Would somebody like to come forward who is best equipped to deal with that?

Ms Laurel Montrose: I apologize, Ms Witmer, I don't have the exact section of Bill 31 that does this. I can't locate it at this moment, but I'll look for it for you.

That bill has already been through clause-by-clause, and it contained two sections, both of which revoke the sections in question. I'll endeavour to find them for you in Bill 31 and let you know, but that has already been completed.

Mr Klees: If I could just get clarification: Are we being told that Bill 31 is revoking sections in Bill 8?

Ms Montrose: That's correct.

Mr Klees: Why would there not be something at this table revoking those sections? I don't understand.

Ms Montrose: I think the intention was to deal with this early on in the process. Because Bill 31 went to committee and through clause-by-clause before Bill 8, it was put forward at that time.

1040

Mr Klees: But that bill hasn't been enacted, so how can you say that Bill 31 has done anything to this bill?

Ms Montrose: You're correct that it hasn't been enacted. But when and if it is enacted, as currently written, it will have that impact; it will revoke these two subsections.

Mr Klees: Why would we rely on that? Can you make a presumption that Bill 31 will be passed?

Ms Montrose: Mr Klees, I'm just a lawyer here. I can tell you that the impact of Bill 31 as it's currently drafted will revoke these two subsections when enacted.

Mr Klees: But we don't know if it's going to be enacted.

Ms Montrose: I can't answer that question.

Mr Klees: Then let me ask you this question: As a lawyer, given the fact that Bill 31 may not be enacted, would it not be prudent for us, as a committee dealing with Bill 8, to take the action at this table to ensure that this bill does what the government intends?

Ms Montrose: I think that calls upon me to speculate as to what will be enacted and when. I can simply say that, when enacted, Bill 31 as drafted will revoke these two subsections.

Mr Klees: Well, Chair, I submit to you that I think it would fall to this committee to deal with Bill 8. We cannot presume that Bill 31 is going to be enacted. Why should this committee simply defer to another bill that's out there when it's our responsibility as a committee to ensure that this bill does what it's intended to do? So I'd call on the parliamentary assistant to make a motion now to take the necessary steps with regard to Bill 8, so that this matter can be resolved before we move forward.

The Chair: Thank you, Mr Klees. Are there any further speakers?

There being none, all those in favour of this motion? Those opposed? The motion is lost.

We move on to page 5, which is a government motion.

Ms Smith: I move that subsection 2(7) of the bill be amended by striking out "or a senior staff member" and substituting "or the chief executive officer or an officer".

The Chair: Speaking to the motion? Ms Martel.

Ms Martel: If I might, Chair, I even recall during the course of the public hearings that at least one presenter from a hospital board made the point that they wouldn't be allowed to sit on the health quality council as a result of this section, and they were quickly assured by the government that "member of the board" was of a health system organization, and the example of the OHA was even used to reassure the presenter that this didn't mean volunteer members of local hospital boards. I would really urge the government to take a step back on this particular section and recognize that it doesn't make a whole lot of sense to force people to choose between making a contribution on a local hospital board as a volunteer and having the potential to sit on the health quality council—having to choose.

If the government meant, as they answered that presenter at the time, that this was only a reference to the

OHA or other political organizations representing health care stakeholders, then the government should make good on that commitment here. I don't see any reason whatsoever to exclude volunteer local hospital board members from the possibility and the potential of sitting on the health council, to have to forgo one in order to do the other.

Mrs Witmer: Again, we support it; we spoke to it before. The hospital board volunteer is often the person who, at the grassroots level, has more insight as to the needs of the local community, the people in the province, than many other person. I think it would be so inappropriate that, with the years of volunteer experience that individual has, at the end of the day they would have to make a choice and give up one in order to do the other.

I get the impression that this particular piece of legislation is really weighted heavily against hospitals and hospital boards and staff in Ontario, and I think this particular section really does speak to that.

Mr Klees: Chair, I would like the government, probably the parliamentary assistant, to give us an explanation as to what has happened between the time—this committee in public hearings, as Ms Martel indicated, was given the assurance that this section would not apply to volunteer members of boards. Now, after all of this consultation, in spite of hearing submissions from across the province, we are back to this and we've put volunteer members of boards back in. I would like to understand, and I'm sure members of the public would like to understand, what has happened and why the government is taking this action.

The Chair: Ms Smith, do you have a response?

Ms Smith: As we already discussed, we're not precluding the board members from sitting on the council; we're just asking them not to do it at the same time. If they'd like to be on the council, they are more than welcome. We'd just ask them not to sit on the board of their hospital at the same time, in order to avoid a conflict of interest, in order to allow them to represent a broader interest.

Mr Klees: With respect, that was not the understanding we were given by the government during hearings, and I'd be interested to know now what has moved the government to take the position that volunteer members of boards would find themselves in a conflict. Do they not believe that these highly qualified people have the ability to take into consideration their responsibilities to the council and keep in perspective these matters of conflict that the parliamentary assistant is speaking to? I'd just like to know what has convinced them now that these volunteer board members would not be capable of carrying out this responsibility?

Ms Martel: May I just get some clarification? In respect of this amendment to the earlier one that we passed, does that also mean that, for example, board members of a not-for-profit, community-based health organization—access aides, palliative care—can't sit as well if they are a member of the board? Do they have to give up their position as volunteers, or is this restricted to hospital board members?

The Chair: Let's get that clarified. Ms Smith, would you answer that, or would you like to call somebody forward?

Ms Smith: I think we'll call somebody forward.

The Chair: OK. Who from staff would be the best equipped to answer the question of Ms Martel? Would you come forward and introduce yourself.

Ms Paula Kashul: My name is Paula Kashul, counsel with the Ministry of Health.

The definition in the proposed amendment that was already dealt with added "a health resource provider within the meaning of part III." In the current bill it's section 19, and there is also a motion to amend that section at page 36 of your motions.

Mrs Witmer: Are you referring to section 19 now?

Ms Kashul: Section 19. That section is proposed to be replaced by a later motion, on page 36. In the proposed amendment, a health resource provider includes "a hospital within the meaning of the Public Hospitals Act … a private hospital … a psychiatric facility … an institution within the meaning of the Mental Hospitals Act … an approved corporation within the meaning of the Charitable Institutions Act," that is, one of the long-term-care facilities, "a municipality or a board of management" for homes for the aged—again, that's a long-term-care facility—"a licensee under the Nursing Homes Act"—again, a long-term-care facility—"a licensee under the Independent Health Facilities Act, or … a community care access corporation...." Then it goes on to exclude certain individuals. Those are the health resource providers who, when you get to that motion, are proposed to replace section 19.

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The Chair: So specifically, some of the examples that Ms Martel gave would or would not be covered?

Ms Kashul: If I could just ask you to repeat, what was the one question that you had?

Ms Martel: My interest was board members of community-based health service organizations: AIDS groups, the hepatitis C group we heard from. Those representatives, as I read this—

Ms Kashul: As you read that, they would not be caught by that definition. Therefore, they would be eligible to be members.

Ms Martel: OK. But anybody else who is on a board of a hospital, psychiatric facility, any long-term-care facility, including municipal, charitable and for-profit—

Ms Kashul: If this motion is passed, yes.

Ms Martel: And community care access centres—all of those people would be excluded in the sense that they have to resign their position on the board in order to serve on the council.

Ms Kashul: Right, it's a board member. Currently, subsection 2(7) talks about a board member or a senior staff. This motion proposes to change that so the board member is not touched—it stays—and we replace senior staff with chief executive officer or other officer of the organization.

Ms Martel: Then, may I just add to my concern, because originally I didn't read this well enough and was thinking just hospital board. We're looking at thousands and thousands of people who operate essentially as volunteers—I want to make that distinction, because it's the volunteer group that I am conscious of—who make a contribution in their community, who would be asked to forgo being able to do that in order to sit on the council. For the life of me, I can't understand why the government is moving in that direction to exclude volunteers on these many, many boards across the province.

That's all I'll say, Chair.

The Chair: Any further comments?

Those in favour? Those opposed? That motion is carried.

Shall section 2, as amended, carry? Those in favour? Those opposed? Section 2 is carried.

Section 3: There are no amendments. Is there any debate on section 3?

Shall section 3 carry? Those opposed? That is carried.

Moving on to page 6, section 4: Ms Witmer.

Mrs Witmer: I move that subclause 4(a)(i) of the bill be amended by striking out "access to" and substituting "quality and accessibility of." This refers to the functions of council.

It says here that "The functions of the council are, (a) to monitor and report to the people of Ontario on...."

We're suggesting that instead of just saying "access to publicly funded health services," that be changed to read, "monitor and report to the people of Ontario on the quality and accessibility to publicly funded health services."

I guess the one thing we want to make sure of is that this particular council has the opportunity to ensure that patients in this province are receiving care of the highest standard. We also want to make sure that the entire issue of patient safety is addressed, and we want to make sure that this health council is truly serving the needs of the people in this regard. We believe it must be given the power to monitor and report on the quality of and accessibility to publicly funded services in Ontario. As presently written, the council does not have that mandate. Unless it's expanded, we don't believe it is going to serve the needs of Ontarians, as it obviously should.

Mr Klees: I just want to add that given the fact that we're referring to this as the health quality council, I think Mrs Witmer's amendment certainly makes a great deal of sense.

The Chair: Further speakers?

There being none, all those in favour of the motion on the floor? Those opposed? That motion is lost.

Page 7: Mrs Witmer.

Mrs Witmer: Yes, section 4. I move that section 4 of the bill be amended by adding the following subsection:

"Evidence-based research

"(2) In carrying out its functions, the council may build on the evidence-based research of other organizations."

Again, I think it's extremely important that the council have the ability to monitor and report on quality, which has just been voted down by the government, regrettably. They also need to monitor and report on accessibility. But I think they also need to be able to take into consideration that there is a lot of good work that has been done by other organizations and they need to have access to that evidence-based research. It might be research that has been undertaken by bodies such as the Institute for Clinical and Evaluative Sciences and other organizations, but I certainly think they need to take that into consideration.

I also think we could avoid duplication if they were in a position to access this evidence-based research. That would also encourage more collaboration and synergy between the various organizations in this province. If they are going to do their work well, they need to have access to some of the data that has already been collected. I think that is critical to their role of monitoring and reporting, and it will allow them to look at quality.

The Chair: Any further speakers to the motion?

Ms Smith: I just wanted to note that certainly in our discussions with various stakeholders on this particular issue we did state that it would be the intention of the council to review the documents and reports provided by a variety of stakeholder groups and organizations in the province that are working in health care. I don't believe we need the amendment to confirm that intention.

Ms Kathleen O. Wynne (Don Valley West): And in fact, in the regulations, it will be made clear that that's exactly the intention.

Mrs Witmer: If that's the intention, I'm not sure why there is any harm in putting this into the body of the bill, because the amendment simply says: "In carrying out its functions, the council may build...." It doesn't make it a prerequisite. I think it's really important that whatever information has been collected by credible research organizations be taken into consideration, so I don't know why the government would oppose this amendment.

The Chair: Are there any further speakers?

Seeing none, all those in favour? Those opposed? That motion is lost.

Shall section 4 carry?

Ms Martel: I'd like to make a point about section 4. I would encourage the government to take a step back and really promote the council by ensuring that it actually has some teeth and is not just a group of very well-meaning people who do good work only to see their report sit on the shelf. I have said before and I'll say again that I think one of their functions should be to make recommendations to the minister as well. So the section would read: "The functions of the council are to monitor, report and make recommendations to the people of Ontario on" the list that appears there. I think if the government says that it wants to be responsive to medicare and wants to support and enhance, then that group of people who are being set up to do just that should have the additional responsibility, obligation and work to make recommendations to the minister on these matters when they see

there are gaps in the health care system. So I think, clearly, they should have that additional and very important responsibility if they are actually going to be able to do meaningful work on behalf of the people of Ontario.

The Chair: Any further speakers?

Shall section 4 carry? Those in favour? Those opposed? Section 4 is carried.

We move on to page 8. The first motion is a government motion.

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Ms Smith: I move that subsections 5(1), 5(2) and 5(5) of the bill be struck out and the following substituted:

"Reports

"(1) The council shall deliver to the minister,

"(a) a yearly report on the state of the health system in Ontario; and

"(b) any other reports required by the minister.

"Tabling

"(2) The minister shall table a report under this section in the Legislative Assembly within 30 days of receiving it from the council, but is not required to table the council's annual business plan."

Ms Martel: I have a question. Is there some reason why the government would not want to have the council's annual business plan tabled? It gives the perception that somebody has something to hide, and I don't know why you'd want to do that.

The Chair: Is there anybody who's prepared to answer that? Or would you like an answer from staff, Ms Martel?

Ms Martel: I'd be interested in what's the motivation. Is it that the budget is going to be so obscene you don't want people to see it? I can't imagine that.

The Chair: That's probably not a question for staff. Are there any further speakers?

Ms Martel: There must be a reason, so I'm just curious as to what it is.

Ms Smith: This is not a change, Ms Martel. It was in the original draft as well.

Ms Martel: Well, wait a minute—

The Chair: I'm sure our staff is not going to pass comment as to whether any budget is obscene, but certainly if you have a question of them that is within their capability, I will ask them to come forward and answer it.

Ms Martel: That would be great. I'd like to know why we are not making that information public. What's the problem?

The Chair: Is staff comfortable in answering that?

Ms Pearl Ing: I'm Pearl Ing.

The Chair: Ms Martel, would you ask the question again, and please try and keep it within the type of question that a staff member can answer.

Ms Martel: Thank you. I will.

The government motion says that the minister shall table the report but he is not required to table the council's annual business plan. I'm wondering why that is not being presented as well, why that would not be tabled.

Ms Ing: In the normal course of procedure, most agencies do not table their business plans to the Legislature. That would go to Management Board of Cabinet. That was the rationale, that few other agencies—at this point we haven't worked out how the agency will be structured. That will be done through regulation.

Ms Martel: If I might, most other agencies aren't reporting annually to the Legislature via the minister either, so there is a difference between this agency and others. Most other health care agencies, you're right, would not be submitting their budgets to the Legislature, but their reports would also not be tabled in that public a manner either.

Ms Ing: I think the intent is that they want to table the yearly report to the Legislature because it is going to be different from other agencies, but in terms of the sort of yearly operational plans, that would go through the normal process all other agencies go through. That was the intent.

Ms Martel: OK. Thanks.

The Chair: Any further comments?

There being none, all those in favour? Those opposed? That motion is carried.

We move on to page 9: Ms Witmer.

Mrs Witmer: I move that subsection 5(4) of the bill be struck out and the following substituted:

"Recommendations

"(4) In a report under this section, the council may make recommendations to the Legislature."

If I take a look at this health quality council, I see here the creation of this council as envisioned in this act to be a contradiction to the promise that was made by the Premier in the speech from the throne. It has no power to make recommendations. Furthermore, in the speech from the throne on November 20, it was stated that there would be new legislation "introduced to create a new health quality council.

"This independent council"—and I emphasize the word "independent"—"will report directly to Ontarians on how well their health care system is working—and how well their government is working to improve health care.

"Your new government understands it can only hold others to a higher standard if it subjects itself to the same standard."

We now see contained within the body of Bill 8 a broken promise, because we no longer have an independent health quality council. We have a health quality council which reports first to the minister and then, in 30 days, the report is tabled. So there isn't the opportunity as originally envisioned for the council to hold the government accountable for the system.

We've now voted down the fact that it can consider the quality of health care, and I'm suggesting that in order to give it some teeth—which it really has not at the present time; it is a toothless council—we at least allow it the opportunity to make some recommendations to the Legislature. I mean, one promise was made; it has now been broken. At least give it some freedom, some

flexibility to report on the quality of the health system, the problems and recommendations for moving forward in order to ensure that the highest standard of care and patient safety is maintained in this province.

The Chair: Any further speakers?

Seeing none, all those in favour? Those opposed? That motion is lost.

Shall section 5 carry, as amended?

Ms Martel: Chair, can I just make a point? The reason I didn't speak to Mrs Witmer's motion is that I think the amendment should say, "shall make recommendations," and I think it should be their requirement. This ties on to the functions that I listed earlier, where I think their mandate should be expanded to monitor, report and make recommendations. If this council is to have any teeth at all, is to have any force in terms of making the government accountable to the findings in their various reports and through their various monitoring activities, then there has to be some obligation on the part of the government to also accept recommendations from the council and actually deal with them, implement them.

As it stands now, I worry that we will have a group of very well-intentioned, well-meaning people who will do a great deal of work, only to see their work sit on a shelf, and I don't think that's going to serve anyone very well. So I think that in addition to changing the functions of the council, which would include recommendations, the council should also be making recommendations not just with respect to future areas of reporting, as appears in the bill—and it now appears that the government wants to keep that section—but also that allow them to do their work so that any area of health care policy, legislation, gaps in health care may be an item for them to make recommendations on, and that they should have to do that.

The Chair: Any further speakers?

There being none, shall section 5 as amended carry? Those in favour? Those opposed? Section 5 is carried.

Moving on to page 11: Mrs Witmer, section 6. I'm sorry; I'm one page ahead of myself. Page 10: Ms Smith.

Ms Smith: I move that section 6 of the bill be amended by striking out clauses (a) and (c) and substituting the following:

"(a) governing the council's constitution, management, structure and legal status;

"(f.1) regarding the nature and scope of the yearly report required by section 5."

The Chair: Seeing no speakers, those in favour of the motion? Those opposed? That motion is carried.

Mrs Witmer.

Mrs Witmer: I move that clauses 6(1)(h) and (i) of the bill be struck out. Again, this amendment builds on a previous amendment, where we want to ensure the supremacy of Bill 31, which has not yet been approved. It has just finished clause-by-clause after first reading. We want to again be absolutely certain and confident that the privacy and personal information of Ontarians are protected. These sections obviously would no longer be required if Bill 31 is proclaimed.

1110

The Chair: Further speakers?

Ms Smith: With respect to Bill 31, Ms Witmer had requested the provisions within Bill 31 which reflect Bill 8 and how they're drafted in tandem. Subsection 77(1) of Bill 31 addresses that concern. If you'd like, I can read it into the record or I can just give you a copy.

"77(1) This section applies only if Bill 8 (An Act to establish the Ontario Health Quality Council ...) ... receives royal assent.

"(2) References in this section to provisions of Bill 8 are references to those provisions as they were numbered in the first reading version of the bill.

"(3) On the later of July 1, 2004, and the day on which subsection 14(6) of Bill 8 comes into force, subsection 14(6) of the Commitment to the Future of Medicare Act, 2003, is repealed.

"(4) On the later of July 1, 2004, and the day on which subsection 15(3) of Bill 8 comes into force, subsection 15(3) of the Act is repealed."

The Chair: Are there further speakers?

Seeing none, those in favour of the motion? Those opposed to the motion? That motion is lost.

On to page 12, still on section 6.

Mrs Witmer: I move that section 6 of the bill be amended by adding the following subsection:

"Referral to Legislative Assembly

"(3) Every regulation made under this section shall be referred to the Legislative Assembly and reviewed by a committee of the Legislative Assembly."

This would ensure and give some confidence to the people in the province of Ontario, particularly those people who are impacted by this legislation, that the stakeholders would have every opportunity to review the regulations and make suggestions prior to the regulations becoming law. It also demonstrates what the government continues to talk about: that they want a collaborative and transparent approach to government. This recommendation certainly would ensure transparency and collaboration.

Ms Smith: The government motion at page 13, new section 6.1, will address public consultation before making regulations. I believe it will address the concerns raised by Ms Witmer.

Mrs Witmer: It will but it won't. I don't think there's an opportunity for it to come back to committee. I think it reads that notice is going to be given and people have an opportunity to comment, but there will not be any public discussion of these regulations within a committee. So it won't be a very transparent process at all.

The Chair: Are there any further speakers?

Seeing none, those in favour? Those opposed? That motion is lost.

Shall section 6 carry, as amended? Those in favour? Those opposed? Section 6, as amended, carries.

Section 6.1 on page 13, a government motion.

Ms Smith: I move that the bill be amended by adding the following section:

"Public consultation before making regulations

"6.1(1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 6 unless,

"(a) the minister has published a notice of the proposed regulation in the Ontario Gazette and given notice of the proposed regulation by all other means that the minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;

"(b) the notice complies with the requirements of this section;

"(c) the time periods specified in the notice, during which persons may make comments, have expired;

"(d) the minister has considered whatever comments and submissions that members of the public have made on the proposed regulation, or an accurate synopsis of such comments; and

(e) the minister has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the minister considers appropriate.

"Contents of notice

"(2) The notice mentioned in clause (1)(a) shall contain,

"(a) a description of the proposed regulation and the text of it;

"(b) a statement of the time period during which a person may submit written comments on the proposed regulation to the minister and the manner in which and the address to which the comments must be submitted;

"(c) a description of any other methods by which a person may comment on the proposed regulation and the manner in which and the time period during which they may do so;

"(d) a statement of where and when members of the public may review written information about the proposed regulation;

"(e) any prescribed information; and

"(f) any other information that the minister considers appropriate.

"Time period for comments

"(3) The time period mentioned in clauses (2)(b) and (c) shall be at least 60 days after the minister gives the notice mentioned in clause (1)(a) unless the minister shortens the time period in accordance with subsection (4).

"Shorter time period for comments

"(4) The minister may shorten the time period if, in the minister's opinion,

"(a) the urgency of the situation requires it;

"(b) the proposed regulation clarifies the intent or operation of this part or the regulations; or

"(c) the proposed regulation is of a minor or technical nature.

"Discretion to make regulations

"(5) Upon receiving the minister's report mentioned in clause (1)(e), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with any changes the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the minister's report.

"No public consultation

"(6) The minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 6 if, in the minister's opinion,

"(a) the urgency of the situation requires it;

"(b) the proposed regulation clarifies the intent or operation of this act or the regulations; or

"(c) the proposed regulation is of a minor or technical nature.

"Same

"(7) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 6,

"(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

"(b) the minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision.

"Contents of notice

"(8) The notice mentioned in clause (7)(b) shall include a statement of the minister's reasons for making the decision and all other information that the minister considers appropriate.

"Publication of notice

"(9) The minister shall publish the notice mentioned in clause (7)(b) in the Ontario Gazette and give the notice by all other means that the minister considers appropriate.

"Temporary regulation

"(10) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 6 because the minister is of the opinion that the urgency of the situation requires it, the regulation shall,

"(a) be identified as a temporary regulation in the text of the regulation; and

"(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force.

"No review

"(11) No action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section shall be reviewed in any court."

The Chair: Speaking to the motion?

Ms Martel: In order to be consistent with the comments I made on Bill 31, which has a section that is somewhat similar—not exactly the same—in terms of the regulation-making process, let me just say that I see no need for subsection 11, either the section that appeared in Bill 31 with the same sort of references or here, that, "No action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section shall be reviewed in any

court." In the case of Bill 31 it also says that no review shall be undertaken by the Freedom of Information and Privacy Commissioner, but I understand why that doesn't apply here.

I think that it leaves the perception that the government has something to hide, and I don't know why the government would want to put itself in that position of having a reference in there in the regulation-making section. It seems to me that if the government feels confident and comfortable about the process it's using to develop regulations and about the regulations themselves, there is absolutely no need for a provision that essentially says that any failure to take action cannot be reviewed by a court. I'm not sure why the government wants to go in that direction, and as I said on Bill 31, I really think you should take that section out.

The Chair: Any further speakers?

Seeing none, those in favour? Those opposed? The motion is carried.

Moving on to page 14, section 7.

Mrs Witmer: I move that the bill be amended by adding the following subsection:

"Waiting times

"7.1 In the interest of increasing health"—

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The Chair: I'm sorry, I'm ahead of myself again. It seems to be the way things are moving this day. We need to deal with section 7 where there are no proposed amendments. Would somebody like to speak to section 7?

Seeing no speakers, those in favour of the motion? Those opposed? Section 7 is carried.

Mrs Witmer, the floor is yours again.

Mrs Witmer: I move that the bill be amended by adding the following section:

"Waiting times

"7.1 In the interest of increasing health care accessibility, the minister shall act to ensure that waiting times for treatment are reasonable."

Part II refers to health services accessibility. I think if we take a look at the issue of accessibility, at the present time we don't have the accessibility, obviously, that we are looking for. The minister has a responsibility to ensure, if we are going to proclaim that people have accessibility, that we take a look at the wait times for treatment and that those wait times are reasonable. To talk about accessibility and not talk about wait times, I think, does a disservice to the people of Ontario.

I go back to what I said before. If, as the minister proclaimed on the day this bill was introduced that he wanted to stop queue-jumping and two-tier and everything else, the reality is, folks, that is a symptom of a problem, and that is that people are waiting too long. If the government is truly committed to medicare, improving accessibility to health care services, it must reduce wait times, and it must address that issue within this bill.

The campaign promise was that they were going to work with the experts to set and meet the maximum needs-based waiting times for care. I think this bill, in its commitment to medicare, needs to reflect reasonable waiting times for treatment.

Ms Smith: I believe the minister, in his opening statement to this committee, did note that the Ontario Health Quality Council could assist in monitoring on specific wait times with respect to specific health services. I therefore think that some of the concerns the member raises will be addressed through the reports of the Ontario Health Quality Council.

Mrs Witmer: I understand, but the key word there is "may," and the other key concern I have is that the committee doesn't have the ability to make recommendations. So regardless of what they discover about wait times or quality of care, it really is a council that has no teeth to make any recommendations in order to reduce the wait times and make sure that our health care system is accessible.

The Chair: Any further speakers?

Seeing none, all those in favour of the motion? Those opposed to the motion? That motion is lost.

Section 8: No amendments are being proposed. Shall section 8 carry? Those in favour? Those opposed? Section 8 is carried.

Moving now to page 15: a government motion on section 9.

Ms Smith: I move that subsections 9(1), (2) and (4) of the bill be struck out and the following substituted:

"Persons not to charge more than OHIP

"(1) A physician or designated practitioner shall not charge more or accept payment or other benefit for more than the amount payable under the plan for rendering an insured service to an insured person.

"Exception

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

"(a) a charge made to or a payment or benefit accepted from a public hospital for an insured service rendered to an insured person in that public hospital;

"(b) a charge made to or a payment accepted from a prescribed facility for an insured service rendered to an insured person in that facility; or

"(c) any other charge, payment, benefit or service that is prescribed, subject to any prescribed conditions or limitations.

"Physicians and designated practitioners

"(2) A physician or designated practitioner shall not accept payment or benefit for an insured service rendered to an insured person except,

"(a) from the plan, including a payment made in accordance with an agreement made under subsection 2(2) of the Health Insurance Act;

"(b) from a public hospital or prescribed facility for services rendered in that public hospital or facility; or

"(c) if permitted to do so by the regulations in the prescribed circumstances and on the prescribed conditions.

"Restriction on who may accept payment

"(4) No person or entity may charge or accept payment or other benefit for rendering an insured service to an insured person,

"(a) except as permitted under this section; or

"(b) unless permitted to do so by the regulations in the prescribed circumstances and on the prescribed conditions.

"Not a payment or other benefit

"(4.1) For the purposes of subsection (4), 'payment or other benefit' does not include a salary or an amount payable under a contract of employment or a contract of services to an employee of or a person who contracts with a physician, practitioner, public hospital or prescribed facility."

The Chair: Any speakers?

Ms Martel: I have a question. We heard from a number of hospitals and physicians about the various payment methods that are in place, particularly in hospitals, to recruit and retain physicians. I'm going to assume there are any number of them and that clause (1.1)(c), "any other charge, payment, benefit or service that is prescribed," is the section that's going to catch everybody we might miss. Am I correct in that?

Ms Smith: Yes. This section allows for the payment of hospitalists. That concern was raised by a number of presenters in our travels.

Ms Martel: In Sudbury, one of the psychiatrists who does work through a CHC gets a payment that way. I just want to be clear that the ministry is looking at (c) as the mechanism by which any plans we don't know about are actually going to be caught and then covered.

The Chair: Would somebody like to come forward and clarify that?

Ms Montrose: Yes, the authority is there to prescribe quite broadly. So if it's not captured by "a public hospital" in (a) or "a prescribed facility" in (b), the regulation-making authority in (c) is quite broad.

The Chair: Are there any further speakers?

Those in favour of the motion? Those opposed? That motion is carried.

Shall section 9, as amended, carry?

Those in favour? Those opposed? That motion is also carried.

It appears there are no amendments to section 10. Is there a speaker to section 10?

Ms Martel: I have a question. I understand that this section was lifted from a previous bill, so the wording that appears in section 10 is essentially the wording that appeared when the original bill, the Health Care Accessibility Act, was adopted.

We did, however, hear from representatives of other regulated health professions who looked at this section and assumed they were excluded from the possibility of negotiating with the government around fees. I thought there was some sympathy, from what we were hearing from the groups, that we should either (a) not specifically reference some of the groups or (b), as an alternative, reference all the regulated health professions so it would be clear that the government may enter into agreements with respect to fees for the whole range of regulated health professions.

Because I don't see an amendment coming forward from the government, I wonder what the decision was, then, not to try to allay some of the fears of the groups who came before us by either specifically referencing everybody or not referencing only some of the group of regulated health professionals.

The Chair: Let's go to Ms Smith first, and do you need to call somebody forward, Monique?

Ms Smith: Absolutely. Subsection 10(3) of the legislation, as drafted, allows for those agreements to be made between the regulated health professionals and the minister.

Ms Martel: I understand that, but that was also in place in the original bill. Even with that in place, it was clear that there was not only a bit of confusion but also a great deal of concern about who might be included and who was excluded. We heard from a couple of chiropractic groups, and I think we also heard from the dental hygienists, who thought they were excluded. I could be wrong about the dental hygienists, but a separate regulated health profession thought they were excluded. Is there some huge problem, in terms of drafting, that would very clearly and concisely cover those groups that need to be covered—those groups the government clearly does enter into agreements with through the regulated health professions in terms of fees being paid for services rendered?

1130

Ms Smith: Again, as we responded to the chiropractors and others who came to present to us, the reason for the drafting is to keep consistency within the legislation. Subsection 3 allows for those agreements to be reached, and there wasn't a sense that the amendments needed to be made.

Ms Martel: I'll just close by saying that I think we should. I'm not sure what you mean by consistency with the rest of the legislation. The dilemma is that we are dealing with a 1986 piece of legislation that didn't make it clear, and I think we should now.

The Chair: Any further speakers on section 10?

Actually, I don't think anyone has moved it yet. Ms Smith, would you like to move section 10

Ms Smith: I move section 10.

The Chair: Apparently we don't need to, but thanks anyway.

Ms Smith: No problem.

The Chair: All those in favour? Those opposed? Section 10 is carried.

Moving on to section 11, page 16: a government motion.

Ms Smith: I move that subsection 11(1) of the Bill be struck out and the following substituted:

"Unauthorized payment

"(1) If the general manager is of the initial opinion that a person has paid an unauthorized payment, the general manager shall promptly serve on the physician, practitioner, other person or entity that is alleged to have received the unauthorized payment notice of the general manager's intent to reimburse the person who is alleged

to have made the unauthorized payment, together with a brief statement of the facts giving rise to the general manager's initial opinion.

"Providing information

"(1.1) The physician, practitioner, other person or entity that is alleged to have received the unauthorized payment may, not later than 21 days after receiving the notice described in subsection (1), provide the general manager in writing with any information that he, she or it believes is relevant to determining whether an unauthorized payment has been paid.

"Payment by general manager

"(1.2) If, after reviewing any information provided in accordance with subsection (1.1), the general manager is satisfied that a person has paid an unauthorized payment, the general manager shall pay to the person the amount of the unauthorized payment."

The Chair: Are there any speakers?

Seeing none, those in favour? Those opposed? That motion is carried.

We move on to page 17, the same section.

Ms Smith: I move that subsection 11(2) of the bill be amended by striking out "subsection (1)" and substituting "subsection (1.2)".

The Chair: Speaking to the motion?

Those in favour? Those opposed? That motion is carried.

Moving on to page 18.

Ms Smith: I move that subsection 11(5) of the bill be amended by striking out "subsection (1)" and substituting "subsection (1.2)".

The Chair: Any speakers?

Those in favour? Those opposed? That motion is carried.

Finally, on section 11, page 19.

Ms Smith: I move that subsection 11(6) of the bill be amended by striking out "subsection (5)" and substituting "subsection (1) or (5)".

The Chair: Any speakers?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 11, as amended, carry?

Those in favour? Those opposed? Section 11 is carried.

Moving on to section 12: There are no amendments before me. Shall section 12 carry?

Those in favour? Those opposed? That is carried.

Moving on to page 20, section 13.

Ms Smith: I move that subsections 13(1), (2) and (3) of the bill be struck out and the following substituted:

"Personal information

"(1) The general manager may directly or indirectly collect personal information, subject to such conditions as may be prescribed, for purposes related to the administration of this part, the Health Insurance Act or the Independent Health Facilities Act.

"Use of personal information

"(2) The general manager may use personal information, subject to any conditions that may be prescribed, for purposes related to the administration of this part, the Health Insurance Act or the Independent Health Facilities Act.

"Disclosure

"(3) The general manager shall disclose personal information if all prescribed conditions have been met and if the disclosure is necessary for purposes related to the administration of this part, the Health Insurance Act, the Independent Health Facilities Act, the Regulated Health Professions Act, 1991 or a health profession act as defined in that act, but shall not disclose the information if, in his or her opinion, the disclosure is not necessary for those purposes.

"Limitation

"(3.1) The general manager shall not collect, use or disclose more information than is reasonably necessary for the purposes of the collection, use or disclosure."

The Chair: Speaking to the motion?

Seeing none, all those in favour? Those opposed? That motion is carried.

Page 21: Ms Smith.

Ms Smith: I move that section 13 of the bill be amended by adding the following subsections:

"(5) Subsection (6) only applies if Bill 31, An Act to enact and amend various acts with respect to the protection of health information, which received first reading on December 17, 2003, receives royal assent.

"(6) On the later of the day this subsection comes into force and the day on which Bill 31 receives royal assent, clause (4)(b) is amended by adding 'or the Personal Health Information Protection Act, 2004' at the end."

The Chair: There is a clarification. Is that on the "later" of the day or on the "latter" of the day?

Ms Smith: You say "later"? Sorry. Later.

The Chair: The "tomato" or "tomatto" thing.

Ms Smith: Exactly.

The Chair: Speaking to the motion that's on the floor?

Seeing none, those in favour? Those opposed? That motion is carried.

Shall section 13, as amended, carry?

Those in favour? Those opposed? That motion is carried.

Moving on to page 22: section 14, Ms Smith.

Ms Smith: I move that subsection 14(1) of the bill be struck out and the following substituted:

"Disclosure of information to the general manager

"(1) The general manager may require that any person or entity submit information to the general manager for the purposes of determining whether there has been a contravention of or a failure to comply with any of the following provisions, if the general manager is of the opinion that such a contravention or failure may have taken place:

"1. Section 9, 11, 15 or 16 of this act.

"2. Section 15 or 15.1 of the Health Insurance Act.

"3. Section 3 of the Independent Health Facilities Act."

The Chair: Any further speakers?

Seeing none, those in favour? Those opposed? That motion is carried.

Moving on to page 23, Ms Smith.

Ms Smith: I move that subsection 14(2) of the bill be amended by striking out "that he or she requires" and substituting "is necessary for the purposes mentioned in subsection (1)."

The Chair: Any speakers?

Seeing none, those in favour? Those opposed? That motion is carried.

Page 24.

Ms Smith: I move that subsection 14(3) of the bill be struck out and the following substituted:

"Time and form

"(3) Subject to the regulations, the information shall be submitted and disclosed,

"(a) in the form required by the general manager; and

"(b) within 21 days of the receipt by the person or entity of the request by the general manager.

"Extension of time

"(3.1) The general manager may extend the period of time mentioned in clause (3)(b) for a time that the general manager believes is reasonable in the circumstances if the general manager believes that the person or entity cannot submit or disclose the information within the prescribed time for reasons that he, she or it cannot control."

Ms Martel: Chair, I have a question. Is the choice of 21 days a practice now? The original bill didn't have any information with respect to timing. I just don't know how you arrived at that. Is it some kind of general practice? Was this agreed to by the general manager? If I could just get that clarification, that would be great.

Ms Smith: I believe it was in discussions in the stakeholder group and the general manager. It was agreed to as being an appropriate time.

Ms Martel: When you say, "stakeholder group," do you mean the OMA or the College of Physicians and Surgeons or both?

Ms Smith: The OMA.

The Chair: Those in favour of the motion on page 24? Those opposed? That motion is carried.

Page 25: Ms Smith.

Ms Smith: I move that section 14 of the bill be amended by adding the following subsection:

"No retaliation

"(7.1) No person or entity shall discipline or penalize any person for reporting, providing or disclosing information under this section unless he or she acts maliciously and the information is not true."

1140

Ms Martel: I just want to be clear that the intention is to protect any and all whistle-blowers here. Originally I was concerned that it appeared that people more in a senior management capacity or a senior capacity would be protected, and maybe I was wrong in my assumption about that. But I want to be clear that this section is really to capture everybody who might come forward.

Ms Smith: Yes, it is to extend the whistle-blowing provision and certainly in defining "any person for reporting," I think that extends that protection to those you are concerned about.

The Chair: All those in favour? Those opposed? That motion is carried.

Page 26.

Ms Smith: I move that the definition of "provincially funded health resource" in subsection 14(9) of the bill be struck out.

The Chair: Speaking to the motion?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 14, as amended, carry?

Those in favour? Those opposed? Section 14 is carried.

Moving on to page 27: section 15.

Ms Smith: I move that section 15 of the bill be amended by adding the following subsections:

"No retaliation

"(4.1) No person or entity shall discipline or penalize any persons for making a report under subsection (2) or for providing information in connection with the report unless the person who reported or provided the information acted maliciously and the information is not true.

"Defence

"(4.2) Where an employer or contractor is charged with contravening subsection (1) as a result of an act committed by an employee, subcontractor or person with whom the employer or contractor contracted, it is a defence to the charge that the employer or contractor took all reasonable steps in the circumstances to prevent such a contravention."

The Chair: Any comments?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 15, as amended, carry?

Those in favour? Those opposed? That is carried.

Moving on to page 28: section 16.

Ms Smith: I move that subsection 16(1) of the bill be struck out and the following substituted:

"Block fees

"(1) A person or entity may only charge a block or annual fee in accordance with the regulations."

The Chair: Any speakers?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 16, as amended, carry?

Those in favour? Those opposed? Section 16 is carried.

Section 16.1, an official opposition motion.

Mrs Witmer: I move that part II of the bill be amended by adding the following section:

"Wait-times

"16.1(1) The Ontario Health Quality Council shall regularly conduct surveys to determine the actual wait-times for various health services.

"Where significant wait-time

"(2) For services where a significant wait-time is documented, the council shall refer the services to a subcommittee of the council to be known as the Scientific Advisory Committee, which shall review the matter and recommend the maximum reasonable wait-time for each service.

"Where exceeds

"(3) Where the council finds that the actual wait-time for a service in a community exceeds the maximum reasonable wait-time, the council shall report that fact to the minister.

"Minister to work

"(4) The minister shall work with the health care providers in the community to establish goals and a work plan to reduce the waiting times, and the goals and work plan shall be a matter of public record.

"Report

"(5) At least twice in every year, the minister shall report to the Legislature on provincial compliance with the maximum reasonable wait-times."

I guess we introduce these amendments because we are now dealing with the section within Bill 8 that concerns health service accessibility. We do know that the government has indicated that in this legislation they want to make a commitment to medicare. A big part of the problem today is the lack of accessibility, whether it's because of a lack of health care professionals to deliver the services or whether it's inadequate funding or having services and programs available to people in all parts of Ontario. I think it really is important that we make sure that no matter where you live in this province, you have access to the service that is needed. That's why I think it is so important to document the wait-times. Nowhere in this bill, which purports to be concerned about accessibility, do we address or identify the issue of wait times as being important to accessibility. So I think these amendments are extremely important.

Again, this council, which now isn't going to be independent, at least needs to have the scope of its mandate broadened. It needs to deal with what I know many people in this province believe to be the most important issue, and that is accessibility. The greatest impediment today to accessibility is the issue of wait-times.

The Chair: Any further speakers?

Seeing none, all those in favour of the motion? Those opposed? That motion is lost.

Moving on to section 17 on page 30.

Ms Smith: I move that subsections 17(2), (3), (5) and (6) of the bill be struck out and the following substituted:

"Penalty, individual

"(2) Subject to subsection (2.l), an individual who is convicted of an offence under this section is liable to a fine of not more than $10,000.

"Same, subsection 15(2)

"(2.1) An individual who is convicted of an offence under this section for contravening subsection 15(2) is liable to a fine not exceeding $1,000.

"Penalty, corporation

"(3) A corporation that is convicted of an offence under this section is liable to a fine not exceeding $25,000.

"Limitation

"(5) A prosecution for an offence under this section shall not be commenced after two years after the date on which the offence was, or is alleged to have been, committed."

The Chair: Any speakers?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 17, as amended, carry?

Those in favour? Those opposed? That motion is carried.

Moving on now to page 31: section 18.

Ms Smith: I move that clause 18(1)(g) of the bill be struck out and the following substituted:

"(g) governing the information that must be provided under section 14, including its content and the form in which it must be provided."

The Chair: Any speakers?

Seeing none, all those in favour? Those opposed? That motion is carried.

Page 32: Ms Smith.

Ms Smith: I move that subsection 18(1) of the bill be amended by adding the following clause:

"(h.1) prescribing conditions and limitations for the purposes of this part."

The Chair: Any speakers?

Seeing none, all those in favour? Those opposed? That motion is also carried.

Page 33: Mrs Witmer.

Mrs Witmer: I move that section 18 of the bill be amended by adding the following subsection:

"Referral to the Legislative Assembly

"(5) Every regulation made under this section shall be referred to the Legislative Assembly and reviewed by a committee of the Legislative Assembly."

Because of the far-reaching impact of this bill and certainly the possibility for the stakeholders not to have adequate opportunity to respond to the regulations that may at some later time be put in place by the government, and the fact that there isn't any opportunity for, I guess, the openness and transparency that the government believes should be there, we just want to ensure that the stakeholders and those concerned people in Ontario have the opportunity to review the regulations. We want not only to make sure they have the opportunity to make suggestions, but we want to know that the government is seriously considering those suggestions and recommendations that are being made. We believe that in order to make sure that there is transparency, co-operation, openness, this amendment is necessary.

1150

Mr Klees: I want to support my colleague in putting this amendment forward. I have to believe that at least the more reasonable members of the government sitting on this committee today—I look at Mr Leal, certainly Mr Delaney, Mr Duguid—would support this. It's going to

take a majority vote to ensure this is done. I can tell you that this is not just the opposition bringing forward this amendment; the request has been made by stakeholders that they have an opportunity to review these regulations.

I didn't make any comment with regard to, for example, the amendment being proposed around block fees, because it was referred to regulations. But I also don't want to trust the government—because I don't think we have a lot of reason to—to bring forward the appropriate regulations. I'm assuming, for example, that with regard to block fees, the College of Physicians and Surgeons will still have their prescribed responsibility around that issue, but we won't know that until we see the regulations. That is just one example.

I would look forward to the government, at least in this one amendment—they have not voted for one very reasonable amendment that's been put forward by the opposition yet today. There's a trend developing here, Mr Chair, that I'm sure is disturbing to you as well, that all of the good consultation that's taken place with stakeholders is falling on deaf ears for members of the government here today. So at least I would expect that this one would pass.

The Chair: Are there any other speakers?

Ms Smith: We'd just like to note that we have provided that provision for part I. However, with respect to this part, there are some timeliness issues with respect to implementation of changes around OHIP fee structures. That's the reason we're not providing that kind of consultation process on the regulations for this particular part of the bill.

Mr Klees: Mr Chair, I can't tell you how absolutely disappointed we are that we would not take the time to give stakeholders the appropriate opportunity to review these very important regulations. Surely we could call a special session of the committee—I would certainly be willing to do that—to ensure that we're not driven by some other timelines here. Let's do it through spring break if we have to. Let's make sure that we do what has to be done to have a good piece of legislation and that the regulations in fact do what is intended. I'd ask the parliamentary assistant to reconsider her response.

The Chair: Thank you, Mr Klees. Are there any further speakers?

Seeing none, all those in favour of the motion? Those opposed? That motion—

Mr Klees: On every one, I think we should have a recorded vote.

The Chair: —is lost.

Mr Klees: I'd like a recorded vote on that last amendment, please.

The Chair: Let me confer with the clerk. Oddly enough, we did have a discussion about this.

OK, a recorded vote has been called for.

Ayes

Klees, Martel, Witmer.

Nays

Delaney, Duguid, Leal, Matthews, Smith, Wynne.

The Chair: That motion is lost.

Shall section 18, as amended, carry?

Those in favour? Those opposed? That is carried.

Section 19, page 34: Ms Smith.

Ms Smith: I move that the definitions of "executive function or position" and "primarily an executive function or position" in section 19 of the bill be struck out.

The Chair: Any speakers?

Seeing none, those in favour? Those opposed? That motion is carried.

Page 35: Ms Smith.

Ms Smith: I move that section 19 of the bill be amended by adding the following definitions:

"'chief executive officer' means any individual who holds the position of chief executive officer with a health resource provider, and any individual who, regardless of title,

"(a) holds a position with a health resource provider similar to that of chief executive officer, or

"(b) performs functions for a health resource provider similar to those normally performed by a chief executive officer; ('chef de la direction')

"'compensation package' means the value of any compensation in any form that is provided to or on behalf of a chief executive officer in respect of his or her office with a health resource provider including,

"(a) any amount that is required by section 5 of the Income Tax Act (Canada) to be included in the chief executive officer's income from his or her office with the health resource provider;

"(b) any amount or benefit paid to or on behalf of another person arising directly or indirectly from the chief executive officer's position with or services provided to the health resource provider; and

"(c) any other prescribed compensation type; ('rémunération')

"'performance agreement' means an agreement between a health resource provider and a chief executive officer of the health resource provider under this part; ('convention de performance').

Ms Martel: I'd just like to ask a general question, because we're heading into an essential rewrite of part III and we've got the definitions that are going to relate now to various sections within part III. Before we get there, can I just be clear that the bill will still allow the minister to claw back various forms of compensation of a chief executive officer? Can I get that clarification right now?

The Chair: I believe you can.

Ms Smith: There are amendments being provided around that process that we will be reviewing in the very near future.

Ms Martel: I understand that, but I want to be consistent in how I vote through this section. Can I just get an answer now as to whether or not somewhere in the amendments that are coming the government or the

minister is still going to have the capacity to claw back compensation of a hospital CEO?

The Chair: Can we point to the section?

Ms Smith: I would refer Ms Martel to section 26.1, which is at page 60 of your package. The Lieutenant Governor in Council may make an order under subsection (5).

Ms Martel: Thanks.

The Chair: Are there any further speakers to the motion on pages 35(a) and (b)?

Seeing none, those in favour? Those opposed? That motion is carried.

Page 36: Ms Smith.

Ms Smith: I move that the definition of "health resource provider" in section 19 of the bill be struck out and the following substituted:

"'health resource provider' means,

"(a) an entity that operates,

"(i) a hospital within the meaning of the Public Hospitals Act,

"(ii) a private hospital within the meaning of the Private Hospitals Act,

"(iii) a psychiatric facility within the meaning of the Mental Health Act, or

"(iv) an institution within the meaning of the Mental Hospitals Act,

"(b) an approved corporation within the meaning of the Charitable Institutions Act that operates and maintains an approved charitable home for the aged,

"(c) each municipality or a board of management maintaining a home for the aged or a joint home for the aged under the Homes for the Aged and Rest Homes Act,

"(d) a licensee under the Nursing Homes Act,

"(e) a licensee under the Independent Health Facilities Act, or

"(f) a community care access corporation within the meaning of the Community Care Access Corporations Act, 2001,

"but does not include a physician or practitioner, as defined in the Health Insurance Act, or a group of physicians or practitioners, in his, her or its capacity as a physician, practitioner or group that receives any payment for the provision of an insured service to an insured person under the Health Insurance Act, or a trade union; ('fournisseur de ressources en santé')."

Mr Jeff Leal (Peterborough): Just a question to the parliamentary assistant: This goes a long way to relieve the concerns that have been raised by CUPE during their presentations. I have the response from them.

Ms Smith: Absolutely. This addresses the concerns that were raised by a number of trade union and worker organizations with respect to whether the accountability agreements will apply to trade unions.

1200

The Chair: Any further speakers?

Seeing none, those in favour? Those opposed? That motion is carried.

Moving on to page 37: Ms Smith.

Ms Smith: I move that the definition of "provincially funded health resource" in section 19 of the bill be struck out.

The Chair: Any speakers?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 19, as amended, carry?

Those in favour? Those opposed? Section 19 is carried.

Moving on to section 20 on page 38: Mrs Witmer.

Mrs Witmer: I move that section 20 of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"In administering this part, the minister shall be governed by the public interest and by the principle that accountability of the government and of health resource providers is fundamental to a sound health system, and shall consider the importance of those of the following matters that the minister, in his or her discretion, determines to be appropriate in the circumstances."

This is the part that refers to the matters under consideration, and we believe it's extremely important to introduce this amendment, because again, it does, I think, speak loudly to the fact that accountability is a two-way street. There is an accountability on the part of the ministry, the minister, as well as the health resource providers, and this ensures the accountability.

It also ensures—because nowhere does it state this—that within part III the minister is required to act in the public interest when implementing performance agreements. We believe it's absolutely essential that the reference to public interest be made here. As we know, the precedent for that obligation can be found in the Public Hospitals Act.

It states:

"9.1(1) In making a decision in the public interest under this act, the Lieutenant Governor in Council or the minister, as the case may be, may consider any matter they regard as relevant including, without limiting the generality of the foregoing...."

Then it goes on to say,

"(a) the quality of the management and administration of the hospital;

"(b) the proper management of the health care system in general;

"(c) the availability of financial resources for the management of the health care system and for the delivery of health care services;

"(d) the accessibility to health services in the community where the hospital is located; and

"(e) the quality of the care and treatment of patients."

Further, as stated above, accountability must—and I stress "must"—extend to both the providers and the government, and in that respect I believe this amendment is very, very important.

Ms Martel: Chair, if I might, section 20 sets out the matters that have to be considered in developing the accountability agreement, and that has to be in the public

interest. So I support it both in this amendment and in the government amendment that comes next.

The Chair: Making everybody happy. Are there any further speakers?

Ms Smith: I would like to thank Ms Martel for her fairness in supporting both motions, and I would note for Mrs Witmer that in our government amendment on page 39 we are addressing the public interest and in fact reflecting the language that's in the Public Hospitals Act. So I think our amendments, both in the preamble, as you'll see later, and on page 39, address all the concerns you're raising through this amendment.

Mrs Witmer: I'll withdraw my amendment then.

The Chair: That amendment has been withdrawn, so let's move on to page 39.

Ms Smith: I move that section 20 of the bill be struck out and the following substituted:

"Governing principle

"20(1) In administering this part, the minister shall be governed by the principle that accountability is fundamental to a sound health system.

"Public interest

"(2) The minister and the Lieutenant Governor in Council may exercise any authority under this part where he, she or it considers it in the public interest to do so and, in doing so, the minister or the Lieutenant Governor in Council may consider any matter that he, she or it considers relevant in the circumstances, including any of the following:

"1. Clear roles and responsibilities regarding the proper management of the health care system and any health resource provider.

"2. Shared and collective responsibilities.

"3. Transparency.

"4. Quality improvement.

"5. Fiscal responsibility.

"6. Value for money.

"7. Public reporting.

"8. Consistency.

"9. Trust.

"10. Reliance on evidence.

"11. A focus on outcomes and the quality of the care and treatment of individuals.

"12. Any other prescribed matter."

The Chair: Speaking to the motion?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 20, as amended, carry?

Those in favour? Those opposed? Section 20 is carried.

Moving on to section 21 on page 40.

Ms Smith: I move that section 21 of the bill be struck out and the following substituted:

"Accountability agreements

"21(1) The minister may give notice to a health resource provider that,

"(a) the minister proposes to enter into an accountability agreement with the health resource provider; or

"(b) the minister proposes to enter into an accountability agreement with the health resource provider and one or more other health resource providers.

"Discussion

"(2) The minister and the health resource provider shall negotiate the terms of an accountability agreement and enter into an accountability agreement within 60 days after the notice under subsection (1) is given.

"Information

"(3) The minister and the health resource provider shall disclose to each other any information, other than personal information, that they consider necessary for the purposes of negotiating an accountability agreement, but this subsection does not,

"(a) authorize or require the minister to disclose information that is not required to be disclosed to a requester under the Freedom of Information and Protection of Privacy Act;

"(b) authorize or require a health resource provider to disclose information that is not required to be disclosed to a requester under the Municipal Freedom of Information and Protection of Privacy Act, if that act applies to a health resource provider;

"(c) authorize or require the disclosure of any information that is subject to any privilege recognized by law; or

"(d) require the disclosure of any information that the minister or health resource provider is entitled not to disclose by virtue of any other law.

"Direction

"(4) If the health resource provider and the minister do not enter into an accountability agreement within 60 days after the minister gave notice under subsection (1), the minister may direct the health resource provider to enter into an accountability agreement with the minister and with any other health resource provider on such terms as the minister may determine, and the health resource provider shall enter into and shall comply with the accountability agreement.

"Performance agreement

"(5) An accountability agreement may provide that a health resource provider will enter into a performance agreement with its chief executive officer to support the achievement by the health resource provider of the terms of the accountability agreement.

"Same

"(6) If an accountability agreement requires that a health resource provider enter into a performance agreement, the health resource provider and its chief executive officer shall enter into a performance agreement within such period of time stipulated in the accountability agreement, and the terms of the performance agreement shall be consistent with the accountability agreement.

"Exception—chief executive officer

"(7) Despite subsection (6), a chief executive officer shall not be required to enter into a performance agreement except with respect to that part of the individual's appointment, employment or contract that relates to his or her function or position as a chief executive officer for the health resource provider.

"Duty of health resource provider

"(8) A health resource provider has a duty to take all reasonable care to ensure that its chief executive officer complies with any performance agreement and his or her duties under this part, including taking such measures as may be necessary from time to time to enforce the health resource provider's rights under the performance agreement."

Ms Martel: I have a question about subsection (4), direction, where it says that the minister may direct the provider to enter into an accountability agreement on such terms as the minister may determine, and the health provider shall enter into that agreement. My concerns is if that process doesn't happen.

I flip to the next government amendment, which is a new section, which certainly talks about an arbitrator, which I assume refers back to subsection (4), which would be the process that kicks in if subsection (4) doesn't work. But I'd like some clarification that that is what has happened.

My second question would be, why wouldn't there be a reference in subsection (4) to the next government amendment that comes that talks about an arbitration process?

Ms Smith: At page 48, new section 21.1, we set out the due process provisions for the minister to issue a directive. You'll see the first one is that, "A health resource provider has not entered into an accountability agreement as directed by the minister under subsection 21(4)." It then goes on to outline the process that's in place before the minister would issue a directive.

1210

Ms Martel: But why wouldn't subsection (4) of the section, which we have just dealt with, make a reference to another provision somewhere else in the bill that clearly outlines what's going to happen? If you read this section, just on the face of it without having a reference to anything else, it clearly says that the minister may direct. Then it clearly says that the health resource provider shall enter into and comply with the accountability agreement. If you read that section by itself with no other reference, it doesn't outline what process happens. It certainly doesn't outline a process that may require an arbitrator rather than unilateral imposition of an accountability agreement on the health resource provider. I think there should be something in subsection (4) that even makes some kind of reference to other sections in the bill where it is clear that this would not be imposed but there would be some kind of arbitrated process.

Ms Smith: The next section in the legislation, as we're proposing be amended—21.1 refers in subsection (1) to 21(4), which is the section that you're referring to, and sets out the due process that's in place to allow the minister to issue a directive.

Ms Martel: I understand that, and that's how I figured out there was going to be some other kind of process versus an imposition. But I don't see what the problem would be in having some kind of reference in this particular section that gives you an indication of what is coming in terms of an arbitrated process.

As you go through this and you follow, as the bill is set out, the first thing that would strike you, if you just look at that section by itself, is that the minister is going to essentially impose something if the health resource provider and the minister don't come to some amicable terms before that. I would just think that there's got to be some way that there's a reference in this section that a more positive outcome might be coming somewhere else in terms of the process.

Ms Smith: Again, I just refer you to the next section where we reference back. Do I understand, Ms Martel, that you're looking for a reference forward as opposed to a reference back?

Ms Martel: Yes.

Ms Smith: Perhaps the drafters could enlighten us as to why we're not referencing forward.

Mr Robert Maisey: I'm Robert Maisey, counsel with the Ministry of Health and Long-Term Care. I think it's just a drafting convention. The intention is to impose in subsection (4) an obligation to enter into an accountability agreement if it's not negotiated. Then section 21(1), which is proposed on page 48, indicates what happens in a variety of different circumstances if various obligations under part III are not followed, one of which is that the "provider has not entered into an accountability agreement as directed," and then it continues. Section 21.1 does not address an arbitration process.

Ms Martel: On the face of it, it wouldn't address any process at all, which would let you come to the conclusion that it's going to be imposed. If it's not going to be imposed, I'm not sure the government wants to leave that impression there.

Ms Smith: I think, as the member opposite knows, no legislation is read with one specific clause without reading the rest. It all hangs together, and that's why the next section refers back to 21(4).

Ms Martel: If I might, we just went through a process on Bill 31 where there were any number of references backwards and forwards, if that's the best term we can use here, any number of areas where there were relations back to other sections, whether they came after or whether they were before the changes. I would think it would be in the government's interest to find a way that it could be clear that something else happens here other than a unilateral imposition. I leave that with the government.

Mrs Witmer: We're now into the whole part III, accountability, and I can tell you, I continue to have very grave reservations about this section. I know the stakeholders have grave reservations about this section. Despite the fact that I know there was some consultation with stakeholders, I think they believe this does not respond to the concerns they raised, and I think that for the government to pretend this reflects a compromise or reflects some of the points that were made would not be accurate.

Probably the whole crux of this bill is contained within part III. The rest is just a shell, but the real goal of the government is here. I don't think there's any attempt

made here to continue to support hospital boards having the governance role that they presently enjoy. In essence, this section, this whole part III, in many ways really does reduce hospital boards to advisory boards. I would have expected the government to spend a little bit more time listening to the stakeholders and trying to respond, unless, as I said at the outset, there's an ulterior motive and a reason to move forward in this way.

Let me just speak to this, because if you take a look at this, folks, there has been no change made. At the end of the day, you've got this 60-day period. If there has not been an agreement reached between the two parties, then it still directs the hospital to sign an accountability agreement that will be unilaterally imposed. There is no statement here that indicates that both parties will agree; it's going to be unilaterally imposed after 60 days.

Well, if that's the case, it will effectively strip hospital boards in your communities of much of the authority they enjoy today. They will not be in a position any longer to make the fundamental decisions about health care services on behalf of their community; the government, the ministry, will be making those decisions. I think that's what this bill is intended to do: take the power away.

If you really care about your hospital board, if you respect the people in your community who have worked so hard on behalf of that community and know first-hand what's needed in your community, you've got to respect the role those boards have had; you've got to make sure you can preserve voluntary governance as it exists today. We have to make sure that if the parties have not been able to reach a negotiated accountability within the 60-day period or where there's an issue respecting compliance with the agreement, any remedial action that is taken—for example, here it's suggesting imposing or enforcing the agreement. I believe the government needs to take a look at making sure you can only impose remedial action by means of an order by the Lieutenant Governor in Council acting in the public interest. That is the only way we're going to be able to protect the interest of local communities.

Proceeding by way of an order in council will ensure that both the board and the ministry will be motivated to come to an agreement and resolve any issues they might have in the best interests of your local community. It's not going to be one-size-fits-all, whether you live in northern Ontario, in Toronto or Ottawa or in a little community such as Clinton.

If you look at having an order by the Lieutenant Governor in Council acting in the public interest, it will also ensure that the powers of the minister are not abused or delegated to non-elected ministry officials.

It's also consistent with the Public Hospitals Act today—today. When we appoint the investigators and the supervisors, it must be done by way of an order in council, so why would we be suggesting anything less in this particular section? So I am going to vote against, in particular, subsection (4). I don't know when it is appropriate, but I would like to substitute an amendment to subsection 21(4).

The Chair: If you were to provide that in writing right now, Ms Witmer, we could deal with it. I'm sure we could get it copied for you, if need be.

I'm going to suggest we take about a two- or three-minute break while we get this copied. I can't wait to see this go through the machine.

The committee recessed from 1222 to 1229.

The Chair: If we can come back to order again, we are actually going to be dealing with two amendments to the amendment that was put forward by Ms Smith, the government motion on page 40. We're going to start with one. Everybody should have one before them. There will be another one that follows this. I propose to deal with it as one amendment to the amendment that will either pass or fail, deal with the second amendment to the amendment, and then deal with the amendment itself. Right now we're dealing with government amendment subsection 21(4).

Mrs Witmer: I move that subsection 21(4) of the bill be struck out and the following substituted:

"21(4) If the health resource provider and the minister do not enter into an accountability agreement within 60 days after the minister gives notice under subsection (1), the minister may refer the matter in writing to the Lieutenant Governor in Council who, acting in the public interest, may make an order setting the terms of the accountability agreement."

I go back to what I said before: In the present direction that is given, if there is no negotiated agreement at the end of 60 days, the minister has the power to unilaterally impose an agreement. I am very concerned, as I know people in this province are, that that would effectively strip power from the boards of hospitals in this province and take away their ability to make the critical decisions that are necessary on behalf of their community. I believe that if we're going to ensure that the boards continue to have the opportunity to reflect the will of the local constituents, we must make this change.

I guess the other concern I have is that if we don't allow for this to happen in this way, through the Lieutenant Governor in Council, there is the possibility that the best interests of the community would not be considered. It would allow, as I said before, that this authority to make an agreement could end up in the hands of non-elected ministry officials. Again, if you take a look at the appointment of supervisors and investigators in this province in the Public Hospitals Act, that decision, at the end of the day, is made by an order in council. I don't know why we would do anything less in these accountability agreements, if you really believe in local boards and in responding to local needs.

Ms Martel: First of all, apologies to the committee, because I was looking at "arbitrator." I thought I was looking at a government motion making reference to an arbitrator at a later date, so that process could be in place. There doesn't seem to be anything in the government amendments that actually does refer to an arbitrated process. So my apologies, because as I look at it now, I was reading Mrs Witmer's amendment, which I would support.

But I have trouble with the amendment that Mrs Witmer just put forward, because it still makes reference to the Lieutenant Governor in Council, who essentially is the cabinet, to make an order. I could be reading this wrong, but that would be my read of the amendment. That would still not satisfy me, because I think the route that should be taken, both in terms of setting up an accountability agreement and then in any disagreement about whether the terms and conditions of that agreement are met, should be matters that can be dealt with independently by a third party.

Through this whole section, if I might, I would be making the argument that there should be room, when there is no agreement, for the parties to take that dispute to an independent third party. I don't consider the Lieutenant Governor in Council to be that. I would have to say that as it stands and as I read it, I can't support what has been put forward, because I think there should be some place here for arbitrated settlements. Both parties at the end of the day might not like it, but the imposition of something, I trust in the public interest, would then be done by neither of the parties but by an independent adjudicator/arbitrator looking at all of the facts before him or her.

The Chair: Just so we're all clear, is there an amendment coming up from the government that speaks to an arbitrated process or an arbitrator? There isn't? OK. I just wanted to clarify that.

Speaking to the amendment, Ms Smith.

Ms Smith: At the risk of being repetitive, I note that we did spend a lot of time speaking to stakeholders on this bill after first reading, not only in these hearings but the minister and the ministry staff have spent a great deal of time meeting with stakeholders who will be deeply affected by some of this legislation. I would note the stunning similarity in the provisions that Mrs Witmer has put forward to the OHA provisions that I have had the privilege of seeing over the last few days and months in discussions with the OHA. There was a process, there was a discussion, there was negotiation. The provisions that we bring forward reflect those negotiations, those discussions and the input we've received from a variety of stakeholders, including those who presented to this committee.

I believe that our provisions allow for a negotiated agreement. We allow for due process should an agreement not be reached between the health provider and the minister. We also have a provision now with respect to the public interest, which Mrs Witmer seemed most concerned about. In my discussions with hospital administrators and hospital boards, they seemed willing to accept the notion of accountability agreements and the protections that are being put in place through these provisions.

I think we've gone a long way to address the concerns of a number of our stakeholders and that the amendments we have brought forward here for section 20 and that we will be bringing forward in sections 21 and 21.1 address most of the concerns you've raised, Mrs Witmer. I believe that at the end of the day we will agree to disagree on some of it.

I believe one of my colleagues may have other comments.

Mr Brad Duguid (Scarborough Centre): Just briefly, I wanted to comment on the suggestion that the boards are going to be advisory only. Nothing could be further from reality. The boards will continue to do what they do and do it well. But at the end of the day, this government is committed to reforming this health care system, and if there are some health care providers who are not willing to go along with our plan of reform, then there is going to have to be some accountability within the system. At some point in time, under very rare circumstances, the government will have to assert itself in that respect. I don't think this government in any way is going to be apologetic for doing that. The previous government tried and failed to reform the health care system adequately. This government will not fail. We're determined to get the job done, but we're going to need the tools to do that.

Some 99% of health care providers across this province agree with the need to bring forward reforms and will work with us to do that. But we do need provisions to deal with the very small percentage of health care providers who may not go along as willingly as the others, and that's why we have to move forward in this way.

Sixty days, two months, to negotiate an agreement is an abundant amount of time to get both parties on side, working together. At the end of those 60 days we're going to have to bring forward the changes we need to bring to this system, and we would expect the majority of health care providers will be on side; those few are not, yes, the minister will have to move forward with an accountability agreement.

1240

Mr Leal: We certainly heard a lot this morning about the expertise that is inherent on volunteer boards in hospitals. During my 18 years in municipal politics in the city of Peterborough, I had the opportunity to spend about nine years on the former St Joseph's Hospital board. One of the things I learned from that experience was, just as Mrs Witmer and Ms Martel have articulated this morning, that these people have a tremendous amount of expertise in the community. They come from various backgrounds to bring that expertise to the board, and 60 days is a reasonable time frame for people who have expertise, have knowledge in that area to come about to a satisfactory conclusion.

I want to remind people here that I was on a hospital board when Duncan Sinclair was making his tour of Ontario during the restructuring commission. Let me tell you, there was a hell of a lot less time than 60 days that he was demanding on behalf of a former government for local boards to make decisions about the future in the community. So 60 days is a reasonable amount of time, and reasonable people will come up with a solution within those 60 days.

Mrs Witmer: Notwithstanding what I've heard, I think it's important to put on the record that no one has a problem with accountability agreements. I think everybody recognizes the fact that there is a need for accountability agreements, but certainly, it needs to continue. Accountability needs to continue not to be a one-way street. I guess what is being suggested here is that, for some reason, there cannot be an agreement negotiated within 60 days, and sometimes there are circumstances which would prevent that from happening.

Right now, we don't even know what type of template the government is going to be looking at. I think there needs to be an opportunity for further discussion, further debate at the cabinet table, where people have the opportunity to bring forward some of the concerns that they might hear from their local community. This eliminates that totally. There's no opportunity to speak on behalf of your local community. This agreement will be imposed unilaterally by the ministry at the end of 60 days.

I've been around here long enough to know that there are some who would like to do away with hospital boards. I'm not sure that this isn't the first step in eliminating hospital boards as we know them today and reducing them to mere advisory boards. That means, I guess, that the ministry will assume all responsibility and will just grow the bureaucracy here and will no longer have input into the decisions, the needs of communities throughout Ontario. I don't know why the government is so reluctant to consider making a change to the negotiation of these agreements in order that the public interest is better served.

Ms Martel: As we listen to people on this bill, there is no doubt that there wasn't any single group that said they didn't support accountability agreements, hospital board members included. But I think we all have to agree that we heard all of those groups also say those agreements had to be negotiated; they could not be imposed. Because if they were imposed, then the local boards would clearly see their role as nothing more than advisory bodies taking direction from the ministry. I don't think I am wrong in my assessment of what I heard from many presenters over the two weeks of public hearings. These had to be negotiated.

If you look at section 21.4, at the end of the day, it's clear that these will not be negotiated if an agreement cannot be arrived at. Despite what the minister told this committee, despite what the minister has said publicly about these being negotiated, at the end of 60 days, if there is no agreement, they will be unilaterally imposed by the minister.

Mr Leal is right: There were extraordinary and broad powers given to the Health Services Restructuring Commission, which I opposed, under Bill 26. But I have to tell you, the language that I see here and the language that is coming up with respect to the clawback of CEO compensation also is a demonstration of excessive and arbitrary powers of the minister. I'm not sure why, after the experience of Bill 26, the new government wants to go there. Why do you want to be seen as having some arbitrary, extraordinary power to essentially take over a hospital? That's what you do when you impose an accountability agreement that is not negotiated or do a clawback from an employee of a hospital board who is the CEO. I suggest you really don't want to go there, if you don't want to be labelled or put into the same category as the previous government with their Bill 26.

I don't care who put forward the solution about a dispute resolution mechanism or an arbitrator. I don't care if it was the OHA, I don't care if it was Mrs Witmer, I don't care if it was one local board that came forward. I think that is the solution that makes much more sense than this legislation, where the minister can impose a solution. Through that process, both of the parties will have to feel that whatever is arrived at is arrived at independently in the public interest. I think the government moves down absolutely the wrong direction here by continuing to allow, even in these amendments, the opportunity for the minister to unilaterally impose a solution.

I think you need to just step back from this and take another good look at why you can't have an arbitrated settlement. If, as most people have argued from the government side, most hospital boards will enter willingly into these agreements and a positive solution will be found that is negotiated and agreed upon, then what is the harm, in those cases where that process breaks down, to have it dealt with by an independent third party?

I cannot encourage you or urge you enough to get rid of any of the arbitrary powers that are listed here that are quite contrary to negotiations and a negotiated settlement and to look for a dispute resolution mechanism or an arbitration process which gets the government out of making an order, imposing orders or taking over a board. Have an independent third party, and I think the results, for those boards you might be having trouble with, will be much better than if the government is seen in a community to be taking over a board or imposing solutions that are not acceptable to a local board.

Ms Smith: I would just again state that we are not in any way questioning the ability of boards to direct their hospitals. We are not in any way affecting their ability to run their hospitals. I would again point the members to section 22, where, in order for a minister to issue a compliance directive, there is a timeline set out, a process set out and a dispute resolution process set out. While it doesn't include an arbitration provision, it does set out a dispute resolution process.

The Chair: Any further speakers? Seeing none—just so we're clear, we are voting on the amendment to the amendment, which is on page 40. You have the amendment before you, moved by Mrs Witmer.

All those in favour? All those opposed? I'm afraid that amendment loses.

I did lead you astray when I told you that we had two amendments to this amendment. The next amendment from the official opposition is actually to section 21(1), so we'll return to the motion that's on page 40. Are there any further speakers? Seeing none—

Mrs Witmer: Recorded vote.

Ayes

Delaney, Duguid, Leal, Matthews, Smith, Wynne.

Nays

Martel, Witmer.

The Chair: The motion is carried.

Moving on to Mrs Witmer, page 41.

Mrs Witmer: I move that section 21 of the bill be struck out and the following substituted:

"Accountability agreements

"21.(1) Subject to subsection (2), the minister and a health resource provided shall, on the request of the Lieutenant Governor in Council, do either or both of the following:

"1. Enter into or renegotiate an accountability agreement.

"2. Enter into or renegotiate an accountability agreement with any one or more health resource providers.

"Due process

"(2) If a request is made under subsection (1), the following process shall be followed:

"1. If the parties mutually agree to the terms and conditions of an accountability agreement, they shall enter into an accountability agreement.

"2. If the parties are unable to mutually agree to the terms and conditions of an accountability agreement within 180 days of the request, or any other time mutually agreed upon by the parties, an arbitrator mutually acceptable to the parties will determine the terms and conditions after receiving submissions from the parties.

"3. If the parties cannot agree on the selection of an arbitrator, each party shall submit a list of three potential arbitrators to a judge of the Ontario Superior Court, who shall select an arbitrator from the lists submitted.

"4. Each party shall be given an opportunity to examine any written or documentary evidence, and a summary of any oral evidence, that another party intends to present to the arbitrator.

"5. Each party shall be given opportunity to make written and oral representations to the arbitrator.

"6. Despite paragraphs 2 to 5, if the parties are unable to mutually agree to the terms and conditions of an accountability agreement, the Lieutenant Governor in Council may, on the written recommendation of the minister, and where satisfied that special circumstances exist and it is in the public interest to do so, make an order to impose an accountability agreement on the parties.

"7. The minister shall cause a copy of the written recommendations of the minister to be delivered to the board of directors of the health resource provider.

"8. The Lieutenant Governor in Council shall not make an order under paragraph 6 sooner than 30 days after the written recommendation has been delivered to the board of directors.

"9. An accountability agreement that is imposed on the parties under paragraph 6 is binding on the parties."

1250

I think we can appreciate the need for this type of motion. We've made the point that it needs to be seen that accountability is a two-way street. We want to ensure that elected, appointed or volunteer boards continue to represent the views of their community. I don't think we want to see as much power as we're seeing right now in the hands of the minister. I believe absolutely there is a need for negotiation. Every stakeholder who appeared before us indicated they did support the accountability agreements but they were looking for negotiations. They were looking at an opportunity to continue to give their best advice.

I think what this motion does as well is reaffirm the responsibilities that boards have, and also the CEO. It reinforces the government's respect and support for those who volunteer. I believe, at the end of the day, if you take a look at this proposal, this amendment, it provides for a very fair dispute resolution mechanism.

I go back to what I said before. Take a look at what the government is proposing. If you are directing health resource providers to sign performance agreements, that is totally contrary to a fundamental tenet of contract law that stipulates that parties must enter freely into contracts. Moreover, if you impose an agreement, as the government is suggesting to do, without negotiation, it continues to undermine the role of the board in making those decisions which they have been asked to do on behalf of their community. I think it's an affront to voluntary governance. It undermines that collaborative approach that the government has said it has been looking for since it was elected.

We also know that there was a process underway, during the time that this bill has been introduced, through the JPPC process, where people were looking at developing a multi-year funding framework and performance agreements. That was all supposed to happen based on negotiations. I don't know what's happened to those discussions, but I guess this bill takes away that discussion that was going on and pre-empts it.

I recommend to the government members that you take a look at how you can best serve your communities, consider what input we have received from stakeholders and support this recommendation.

The Chair: Are there any further speakers?

Seeing none, on the motion on pages 41(a) and (b), those in favour? Those opposed? That motion is lost.

I'm going to suggest that prior to getting into any one of the motions—we aren't going to finish all the ones in section 21—perhaps this would be a good time to break. We will recess until 2 o'clock.

The committee recessed from 1256 to 1406.

The Chair: OK. We can call back to order. I've got some very important news for the committee: The Leafs

have acquired Ron Francis, Calle Johansson and Chad Kilger, in case anybody was wondering.

Interjection.

The Chair: Fourth-round draft pick, I think.

Now, back to business. My understanding is we left off at page 41. Ms Witmer, you have a motion to bring forward.

Mrs Witmer: I think, in light of the discussion that has been had, I would withdraw this motion.

Ms Smith: Page 42?

Mrs Witmer: Yes.

The Chair: Page 43: Mrs Witmer.

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

The Chair: Page 44.

Mrs Witmer: I move that subsection 21(2) of the bill be struck out and the following substituted:

"Exception

"(2) Despite subsection (1), the minister may not require an individual to enter into any accountability agreement."

What we're speaking about is the need for negotiated agreements, the opportunity for the minister to be accountable to the public, the public interest, and we believe that to do anything else undermines that relationship that presently exists between the board and the ministry and the board and the CEO.

The Chair: Any further speakers? We're on page 44.

All those in favour of the motion? Those opposed? That motion is lost.

Page 45: Mrs Witmer.

Mrs Witmer: I move that subsection 21(2) of the bill be struck out and the following substituted:

"Negotiation and renegotiation of accountability agreements

"(2) An accountability agreement under subsection (1) may be entered into only if the parties to the accountability agreement mutually agree to the terms and conditions of such agreement.

"Arbitrator

"(3) If the parties cannot agree to the terms and conditions of the accountability agreement within 180 days of a request by the minister, or by such other date agreed upon by the parties, an arbitrator mutually acceptable to the parties will determine the terms and conditions of the accountability agreement upon submissions from the parties.

"If cannot agree

"(4) If the parties cannot agree on the selection of the arbitrator, each party will submit a list of three arbitrators to a judge of the Superior Court of Justice and that judge will select the arbitrator to determine the terms and conditions of the accountability agreement upon submissions from the parties."

Again, this really speaks to what we have been trying to stress throughout our discussion on part III, the accountability piece, and that is giving the two sides the freedom to negotiate these agreements and providing a mechanism by which the parties to the agreement may resort to a dispute resolution mechanism in circumstances where they have been unable to reach an agreement. I would hope the government is starting to recognize the need to look at a vehicle for dealing with agreements they can't reach a resolution on.

Mr Klees: I just would like to weigh in on this again, to reinforce the point that Mrs Witmer has made. No one is suggesting that there shouldn't be an accountability mechanism. What is offensive, frankly, is the unilateral direction the minister seems to want to take in these matters. We cannot—I don't believe the stakeholders can—understand why the minister wouldn't be prepared to build some form of meaningful negotiation into this process. I hope that the government will see their way clear to supporting this amendment. It just makes good sense, very consistent with what they say the objective is.

1410

Ms Martel: Very briefly, I agree with the amendment.

The Chair: Thank you. That was very brief. Any further speakers?

Being none, all those in favour?

Ms Martel: Recorded vote.

Ayes

Klees, Martel, Witmer.

Nays

Delaney, Duguid, Leal, Matthews, Smith, Wynne

The Chair: That motion is lost.

We'll move on to page 46.

Mrs Witmer: Again, I don't think we can stress enough the need for negotiations in these agreements as opposed to having them unilaterally imposed at the end of 60 days. So I would move that subsection 21(2) of the bill be struck out and the following substituted:

"Due process

"(2) If a request referred to in subsection (1) is made, the following process shall be followed:

"1. The minister shall deliver a notice in writing to the health resource provider setting out the issues to be addressed in the initial or renegotiated accountability agreement, and the proposed terms of the initial or renegotiated accountability agreement.

"2. The parties shall meet within 60 days of delivery of the notice under paragraph 1, or such later date agreed upon by the parties, to determine if they can reach agreement on the matters in the notice.

"3. Each party shall have the opportunity to make written and oral representations prior to the meeting concerning the issues set out in the notice.

"4. Before the meeting, each party shall be afforded an opportunity to examine any written or documentary evidence, and a summary of any oral evidence, to be relied upon by a party.

"5. Each party to the proposed initial or renegotiated accountability agreement shall be provided with the

opportunity to make written and oral representations at the meeting.

"6. If the parties cannot reach an agreement as to the issues described in the notice, upon written recommendation of the minister, the Lieutenant Governor in Council may make an order to impose an initial or renegotiated agreement.

"7. An order under paragraph 6 may be made only where the Lieutenant Governor in Council is of the opinion that exceptional circumstances exist and that it is in the public interest to do so.

"8. The minister shall cause a copy of the written recommendation under paragraph 6 to be delivered to the board of directors of the health resource provider.

"9. The Lieutenant Governor in Council shall not make an order under paragraph 6 earlier than 30 days after the minister's written recommendation has been delivered to the board of directors of the health resource provider.

"10. If an order is made under paragraph 6 to impose an initial or renegotiated accountability agreement on a health resource provider, such agreement will be deemed to be binding on the parties to the accountability agreement."

Again, we believe that it is necessary to enter into these accountability agreements. Certainly, the stakeholders who appeared before us all agreed, but the legislation should be providing a mechanism by which the parties to the agreement may resort to a dispute resolution mechanism in circumstances where they have been unable to reach an agreement. Again, I would just encourage the government to seriously consider the unilateral way in which they are asking that these agreements would be imposed after 60 days.

Mr Klees: Chair, I would just ask the parliamentary assistant to provide the committee with a rationale as to why the government would not support this amendment.

Ms Smith: We just passed an amendment at page 40 which addresses a number of the concerns. There are also dispute resolution provisions coming up in the next amendments that we are discussing at page 48. I believe the proposal that Ms Witmer is putting forward is actually cumbersome and more time-consuming than is necessary.

The Chair: Mr Klees, you have the floor.

Mr Klees: I will look for that amendment. I wasn't aware that you had dispute resolution mechanisms built into your amendment. You're saying it is there?

Ms Smith: Page 48(b).

Mr Klees: Thank you very much.

The Chair: Are there are further statements on page 46?

Ms Martel: Sorry, I'm trying to quickly read through the section that the parliamentary assistant has referenced. My concern would continue to be that the minister at the end of the day, in spite of the resolution mechanism set out, still has the power to unilaterally impose something. I want to get clarification of that. Is my reading of this correct or incorrect?

The Chair: Ms Smith, can you answer that?

Ms Smith: There is a process on which a directive can be issued.

Ms Martel: I understand there may be a process. My question has to do with whether or not, at the end of the process, the minister has the power to either issue an order or unilaterally impose some kind of circumstance or situation.

Ms Smith: After following due process, yes, the minister can issue an order or a directive.

Ms Martel: Given that, let me just speak briefly to the motion that's before us and again reiterate my concern with what we heard over and over again, which was that people agreed with accountability agreements but they had to be negotiated, not imposed. I would say to the government that I think your best bet, again, is to be looking at an arbitration process where an independent third party makes the final decision. That takes it out of the hands of the government and, after due notice and due process, the arbitrator, acting in the public interest, would be able to give a ruling. But if you continue down the road where the minister, at the end of the day, has the final say, the powers of the minister will continue to be seen as arbitrary and unnecessary.

Mrs Witmer: Despite the comments made by the parliamentary assistant referring to the process of dispute resolution that they're introducing, this in no way, shape or form speaks to the due process that I have just outlined. Basically that reserves for the minister the right to enforce or put in place an agreement, and again, the final arbiter is the minister. It's not a neutral third party. So I don't think there is an adequate process for dispute resolution. It's still a very heavy-handed process of making sure at the end of the day, I guess, that the ministry and the minister are able to do whatever they want in issuing an order.

Mr Klees: Having had an opportunity to read the government's amendment that the parliamentary assistant referred to, seeing as we didn't get these until very late yesterday afternoon, I agree with my colleagues that certainly the government motion on page 48 does not address what the amendment that's now before us attempts to deal with. In fact, the government motion is really a lot of window dressing. The right words are used, but there certainly is nothing here that gives us any comfort that the government intends to have good-faith discussion and negotiation, and it certainly leaves all the authority, all the power to make the final decision. So you arbitrate for a while and when the minister is fed up with that, he'll just make his directive. It's not what we're suggesting here at all. So if the government agrees with the spirit that there be arbitration, then they should be supporting this amendment.

1420

The Chair: Are there any further speakers?

Seeing none, all those in favour of the motion? Those opposed? That motion is lost.

Page 47: Ms Witmer.

Mrs Witmer: I move that section 21 of the bill be amended by adding the following subsection:

"Performance agreement

"(3) An accountability agreement between a health resource provider and the minister may require that the health resource provider enter into an agreement with its chief executive officer concerning his or her performance in that capacity, on terms to be negotiated between the health resource provider and the chief executive officer."

I guess this provision does ensure that each hospital board would have a performance agreement with its chief executive officer.

While I'm on this whole issue of accountability, I have to tell you I'm really quite offended by the news release that's just been put in front of me and was issued by this government at 2:01, where you claim that the amendments that are introducing support and enhance the role of voluntary boards and spell out the four providers that are subject to accountability agreements, and state that the accountability agreements will be negotiated between the board and the minister. That is not accurate.

Mr Klees: Actually, it's worse than not accurate.

The Chair: Are there any further speakers to the motion on page 47?

There being none, all those in favour? Those opposed? That motion is lost.

Shall section 21, as amended, carry? Those in favour?

Ms Martel: Recorded vote.

Ayes

Delaney, Duguid, Leal, Matthews, Smith, Wynne.

Nays

Klees, Martel, Witmer.

The Chair: That motion is carried.

We move on to page 48. That is a government motion.

Ms Smith: This government motion is around compliance directives and the process around those directives.

I move that the bill be amended by adding the following section:

"Notice of non-compliance—health resource provider

"21.1(1) The minister may give notice in writing to a health resource provider where the minister believes that any of the following circumstances have occurred:

"1. A health resource provider has not entered into an accountability agreement as directed by the minister under subsection 21(4).

"2. A health resource provider has not entered into a performance agreement with its chief executive officer as required under subsection 21(6).

"3. A chief executive officer has not entered into a performance agreement with a health resource provider as required under subsection 21(6).

"4. The terms of a performance agreement that a health resource provider and its chief executive officer have entered into or intend to enter into are not consistent with the terms of an accountability agreement as required under subsection 21(6).

"5. A health resource provider has not complied with a term of an accountability agreement.

"6. A health resource provider has not complied with its duty under subsection 21(8).

"7. A health resource provider has not complied with a term of a performance agreement.

"8. A chief executive officer has not complied with a term of a performance agreement, an order issued under subsection 26.1(5) or any provision of this part that a chief executive officer is required to comply with.

"9. A health resource provider has not complied with a compliance directive, an order issued under section 25, or an order issued under subsection 26(1).

"10. A health resource provider has not complied with any provision of this part.

"Contents of notice

"(2) A notice under subsection (1) shall briefly describe,

"(a) the circumstance that has led the minister to give the notice; and

"(b) any directions that the minister proposes to make to the health resource provider in a compliance directive or an order under subsection 26(1).

"Process of dispute resolution

"(3) After receiving a notice under subsection (1), where a health resource provider disputes any matter set out in the notice,

"(a) the minister and the health resource provider shall discuss the circumstances that resulted in the notice or any directions that are proposed in the notice;

"(b) the minister shall provide to the health resource provider any information that the minister believes,

"(i) is appropriate for the minister to disclose to the health resource provider, and

"(ii) is necessary to an understanding of the circumstances referred to in the notice or the directions that are proposed in the notice; and

"(c) the health resource provider may make representations to the minister about the matters set out in the notice.

"Consideration

"(4) The minister shall consider any representations made under subsection (3) before making a decision to issue a compliance directive or an order under subsection 26(1).

"Exception

"(5) Subsections (1) to (4) do not apply to the issuance of an order under subsection 26(1) if the minister believes that,

"(a) a circumstance described in subsection (1) exists which urgently requires that an order under subsection 26(1) be issued to a health resource provider and the circumstance is,

"(i) exceptional and unlikely to occur in the future, or

"(ii) causing or likely to cause harm to any person or property;

"(b) it is reasonable not to follow the procedures set out in subsections (1) to (4); and

"(c) it is necessary to issue an order under subsection 26(1) to a health resource provider to remedy the circumstance or alleviate the effects of the circumstance."

The Chair: We have notice of an amendment that we will deal with first. Just so we could confirm, point 8 on page 48(b) talks about "an order issued under subsection 26.1(5)." Is that number accurate, or can we perhaps confirm that number while we're discussing the amendment?

Interjection.

The Chair: OK, the number is accurate. I think Hansard may have heard 21.5.

Ms Smith: Sorry.

The Chair: It should be 26, and I think Hansard perhaps heard 21.

OK, we have an amendment that's being placed by Ms Witmer.

Ms Smith: No, it's our amendment, Mr Chair.

The Chair: This is an amendment to the amendment that we had previous knowledge of.

Ms Smith: Oh, sorry, Mr Chair. We don't have a copy of it.

The Chair: No, it's going to be circulated right now. As before, we'll deal with the amendment to the amendment, and then the amendment itself.

Mrs Witmer: I move that clause 21.1(4) introduced by the government, this new amendment—I guess what we're trying to do is keep on top of all these new amendments—be amended and the following clause substituted:

"The minister may refer the matter in dispute and any representations made under subsection (3) to the Lieutenant Governor in Council who, acting in the public interest, may issue a compliance directive."

Again, this speaks to what we believe is the need for these agreements to at least have an airing at the cabinet table and that the minister not be allowed to continue, in a heavy-handed way, to unilaterally impose agreements on hospital boards. In fact, it goes contrary to what you have proclaimed in your press release, which is really misleading. You say here:

"The Ontario government tabled the following key amendments to clarify the intent of the bill: ...

"Stating that accountability agreements will be negotiated between boards and the minister."

Folks, that is not the case. These are not the facts before us. You've stated that if they cannot reach an agreement after 60 days, it can be imposed unilaterally. I wish you had told the whole story in the news release.

Ms Martel: I appreciate what Ms Witmer is trying to do with this amendment, which is to check the power of the minister. The reason I can't support it is that I don't think it makes the situation much better if it's cabinet that can review what the minister is doing. The minister is part of the government; I assume the cabinet is going to support one of their ministers, otherwise he or she wouldn't be in that position.

So I'd make the argument again that if you are trying to do this in a manner that is not arbitrary and heavy-handed, then the best way to do that would be to have an independent party do that. I can't support the amendment, because I continue to believe that that there has to be an independent third party—independent of both of the parties; that is, of government and of the boards—that will have the final say.

1430

Ms Smith: I would just remind the committee members and those listening at home that in fact the minister and the health resource provider shall negotiate the terms of an accountability agreement under this legislation under section 21, as amended, an amendment that we just passed, and it is only in those circumstances where an agreement cannot be reached that the minister may issue a directive. So unlike the member opposite, who continues to insist that they aren't negotiated, we have made it quite clear that these agreements will be negotiated between the boards of hospitals and the ministry.

Ms Martel: I was not going to intervene, but I have to. I'm sorry, that's just not the case. We're sitting here, and I have asked very pointed questions about what happens if an agreement can't be reached. In every case where an agreement can't be reached, the minister can unilaterally impose a solution. That is not negotiation, by anybody's standards.

I appreciate that the government would like the public to believe, and would like the hospital boards in particular to believe, that these are going to be negotiated. But when the minister has the final say, when the minister wields the big club, the big stick, and the minister decides what is going to be imposed, that's not negotiation, that is arbitrary use of power. The government shouldn't be going down that road, because the government is going to lose good volunteers who will not have any part of that and who will say, "I don't want to be anywhere near this."

If the government was smart and meant what it said, the government would find an independent third party to deal with these mechanisms instead of continuing to have language here that makes it clear that at the end of the day the minister, and the minister alone, has the final arbitrary say and the power to do what he or she wants to and impose.

Mr Klees: Ms Martel, that was very well said. I want to endorse everything that Ms Martel has said here. Somehow we're not getting through to the members of the government. I'm not sure what Kool-Aid you people were fed for breakfast, but somewhere along the line you have to understand that for you to say and try to get anyone—even your own staff are embarrassed now at your performance on this. The minister has to be watching this by closed-circuit television, and he's cringing. For you, on one hand, to argue that there is in fact arbitration but then to allow that when all that arbitration is done the minister still reserves the right to do whatever he wants to do—what planet are you folks on?

We have a letter here from one of the hospitals, signed by all the members of the board who effectively are

saying that if you do this, they will resign. The suggestion is that there are boards right across this province who will do the same. It's also been suggested that maybe that's what you want, that maybe what the Minister of Health wants, what this government wants, is a wholesale resignation of every volunteer member of every board in the hospital, for them to just pack it in so you can do whatever you want. Effectively, that's what you're leaving them with. I think you're going down a very, very dangerous path here.

Chair, I'm going to ask for a recorded vote on this, so that people right across the province will know which member of the government here continues to insist that there is not, and should not, be a meaningful role for volunteer board members. Folks, take note of who casts the vote here.

Mr Duguid: I think it's important to note, as we're speaking about this particular item, that in fact the board—as a member of a board of a hospital for nine years prior to being elected here, I can assure the members opposite that the boards will be able to deal with their duties just as they have in the past. But we will not do what the members opposite did: We're not going to drag our feet when it comes to reforming this health care system. We've got to move forward with these reforms, and the only way we're going to do that is by putting an effective form of accountability into this system.

My view is that the motions they've been moving have been foot-dragging motions that are just going to ensure that we never get on with the important reforms we have to make to this health care system. We're not apologetic about the fact that we're going to have some strong accountability in this bill; we need it if we're going to move this system from the state it's in now to an improved state that the people of Ontario, frankly, have elected us to do.

The Chair: I would remind everyone that we are speaking to an amendment that the minister may refer the matter in dispute to the Lieutenant Governor in Council.

Mr Bob Delaney (Mississauga West): I have only one brief remark. I'd like to thank Mr Klees for his passionate defence of Ms Martel, who has just spoken against his party's amendment.

Mr Klees: If I can speak to that, Ms Martel spoke very strongly in favour of ensuring that there is third party arbitration here. I support her wholeheartedly in that and will continue to do so.

My point was that this bill, contrary to Mr Duguid's assertion—and I'm surprised, as a former member of a board; this is what happens, Brad, when you move from the real world into this world of being told what to do as a member of the Liberal caucus. Somehow there's a disconnect with reality. I feel for you, because I know you're pain inside. You would like to do the right thing—I know that—particularly because you know how important the role of a board member is, the experience they bring to the table and that they don't need the kind of heavy-handedness that this bill is going to bring down on the board. So you would want to vote in favour of this, I know, if you had your own way, if you were free to do so. I would say that we should accept this amendment. It doesn't go all the way, as Ms Martel indicated, but it is certainly a step in the right direction. There are other amendments that we have here that will take it the distance. So we're going to watch very carefully to see what Mr Duguid does.

Interjection.

Mr Klees: We wish you well. This is only the beginning. This is only your first bill. After your 20th or 30th bill, after you find out that you really have no say as a Liberal backbencher, I believe that you in particular, Mr Delaney, who I have a great deal of respect for as well, will at some point take a stand and say no to your minister and no to your leader, and say, "Let's really reform how we do business in this place. Let's do the right thing, because it's the right thing to do."

Mr Leal: Today I've witnessed the greatest conversion since Saul on the road to Damascus from my respected friends from the Conservative Party. These are the same people, through Bill 26 with their good friend Duncan Sinclair, who went around this province. They didn't give hospital boards in Ontario days to make decisions; they gave hospital boards hours to make decisions. It's really interesting. Winston Churchill once said you shouldn't try to rewrite history when some of the players are still around to verify the facts.

The Chair: Ms Wynne?

Ms Wynne: No.

The Chair: We had such a civil morning too, didn't we? Ms Witmer.

Mrs Witmer: I would just like to remind Mr Leal that, coming out of the health restructuring commission and Dr Sinclair, your community had the good fortune of getting a new hospital. So I don't think things worked out all that badly.

Mr Leal: That's not my point.

Mr Klees: Of course it's not your point.

Mr Leal: It was your pressuring with a gun for boards to make decisions. I'm not talking about the outcome; I'm talking about the process, Mrs Witmer, to get a decision made.

The Chair: Through the Chair, please.

Mr Leal: You know full well that Duncan Sinclair put the gun to boards' heads to make decisions within hours. That's a fact.

1440

Ms Martel: If I might, Mr Chair, since I've been referenced a couple of times here, let me make it clear that the amendment I would support would be one that would establish an independent arbitrator process, independent of cabinet and independent of the two parties. I won't be able to support the amendment put forward by the Conservatives, because it doesn't do that. It goes right back to the government and we're going to be in the same position.

Just with respect to what Mr Leal said: He's right that Bill 26 was obnoxious. But it was not obnoxious because of how many hours or minutes or days hospital boards were given to respond; it was obnoxious because of the

overwhelming, unnecessary, arbitrary power of the commission, fronted by the minister, to essentially determine how boards and hospitals were going to operate.

I just have to say as strongly as I can, why do you folks want to go down the same road? Why? You are, in this bill, maintaining arbitrary, unnecessary powers for the minister. Nobody who came before us disputed the need for accountability agreements; they said they had to be negotiated. You could get yourself out of this problem by ensuring, in those cases—as you have said, those rare cases—where the board and the minister don't agree, that you have an independent process whereby the final decision is made, instead of the minister coming forward in a heavy-handed way and imposing something. I can't stress enough to you how you are going down the same road that they did when they were in government by allowing the minister to have the final say and imposing something in an arbitrary manner.

Do yourselves a favour and find a process, for those rare occasions when people can't agree, where something is done independent of both of the parties and a decision is made in the end by an arbitrator and the parties have to live with it. That's a much better solution than having the minister impose something in your community.

The Chair: Mr Klees?

Mr Klees: I rest my case.

The Chair: We're all feeling each other's pain; I can tell. Quite the little amendment; you sparked the debate of the day, I think.

Mrs Witmer: Debate is healthy.

The Chair: It is. I'm going to ask that we vote on the amendment now.

Mr Klees: Just before we do, could you take the shackles off the members of the government?

Ayes

Klees, Witmer.

Nays

Delaney, Duguid, Leal, Matthews, Martel, Smith, Wynne.

The Chair: That amendment loses.

We return to the original amendment on page 48. Any further debate on that motion? Seeing none, all those in favour?

Ayes

Delaney, Duguid, Leal, Matthews, Smith, Wynne.

Nays

Klees, Martel, Witmer.

The Chair: We're moving on to page 49.

Mrs Witmer: I move that the bill be amended by adding the following section:

"Trade unions and collective agreements

"21.1 Despite any other provision of this part,

"(a) no trade union shall be required to enter into an accountability agreement, or be the subject of a directive;

"(b) no collective agreement shall be the subject of an accountability agreement or of a directive or an order under this part;

"(c) no accountability agreement or directive or order under this part shall directly or indirectly affect the continued operation and enforceability of a collective agreement or interfere with the ability of the parties to a collective agreement to comply with its terms."

Obviously we have heard from the deputants who came before this committee—members of unions, associations—concerns about the ability of the accountability agreements somehow at the end of the day to override their own collective agreements and cause changes in the terms of those agreements which could mean a loss of jobs or certainly changes in any one of the provisions.

The Chair: Are there any further speakers to this amendment? Seeing none, all those in favour? Oh, Ms Smith, I'm sorry.

Ms Smith: I just wanted to address the fact that section 19, as amended, clearly states that trade unions are not health resource providers. We made that perfectly clear.

The Chair: All those in favour? Those opposed? That motion is lost.

Moving on to page 50: Ms Witmer.

Mrs Witmer: I might ask the government, on this amendment, whether or not we've made changes that would speak to what is intended here. Has that been covered?

Ms Smith: I'm sorry; could you repeat the question?

Mrs Witmer: The amendment here is, "Despite any other provision of this act, the organizations known as family health networks, primary care networks and family health groups shall not be required to enter into accountability agreements." I've suggested that the bill be amended by adding the following section, and then said "certain exceptions."

Ms Smith: Section 19, health resource provider, is clear that the definition does not include physicians or practitioners as defined under the Health Insurance Act or groups of physicians or practitioners in his, her or its capacity as physician practitioners or groups that receive payments.

Mrs Witmer: In essence, that's what these are. These are groups. So would 19 already cover those?

Mr Maisey: Yes, that's right.

Ms Smith: My understanding is yes.

Mrs Witmer: If that's the case, I would withdraw this motion.

The Chair: Section 22, page 51: Ms Smith.

Ms Smith: Mr Chair, we've provided the clerk with a copy of a change to this amendment. It's a very small

change, and the revised amendment is being distributed right now.

The Chair: So this amendment replaces what we have before us in its entirety?

Ms Smith: Actually, we're missing page 3. The change appears on page 2. So if the members would kindly—

The Chair: Keep their page 3?

Ms Smith: Yes; 51 and 51(b) are replaced by the two pages we've just given you, and 51(c) remains intact.

Can I take the members through the amendment? Ms Witmer, are you OK?

Mrs Witmer: Yes, I've found it. Thanks.

Ms Smith: I move that section 22 of the bill be struck out and the following substituted:

"Compliance directives—health resource provider

"22(1) If any circumstance referred to in a notice under subsection 21.1(1) continues for more than 30 days after the notice was given by the minister, the minister may issue a compliance directive to the health resource provider.

"Compliance

"(2) The health resource provider shall comply with a compliance directive.

"Directions

"(3) A compliance directive may require the health resource provider to comply with any directions set out in the compliance directive relating to the following:

"1. Requiring the health resource provider to enter into an accountability agreement with the minister on the terms set out in the compliance directive.

"2. Requiring the health resource provider to enter into a performance agreement.

"3. Requiring the health resource provider to comply with a provision of this part, a term of an accountability agreement, or a term of a performance agreement.

"4. Requiring the health resource provider to meet with the minister or any person designated by the minister, at a time and place set out in the compliance directive, for the purposes of discussing any non-compliance identified by the minister.

"5. Requiring the health resource provider to carry out or cause to be carried out an audit, as directed by the minister.

"6. Requiring the health resource provider to study and to report to the minister on any matter as directed by the minister.

"7. Requiring the health resource provider to provide any information identified in the compliance directive to the minister or to otherwise assist the minister or any person authorized by the minister to conduct an audit or carry out a study or report in respect of the operations of the health resource provider.

"8. Requiring the health resource provider to develop or implement an education or remedial learning plan for the health resource provider, or to follow an educational or remedial learning plan.

"9. Requiring the development of a budget for the review and approval of the minister as set out in the compliance directive.

"10. Requiring compliance with a budget as set out in the compliance directive.

"11. Requiring the posting and distribution of any matter as required by subsection 29(3).

"12. Taking any action or refraining from taking any action that is specified in the compliance directive to correct the circumstance of non-compliance described in the notice under subsection 21.1(1), to prevent its re-occurrence, or to remedy any effects of the circumstance of non-compliance.

"Times

"(4) In any compliance directive, the minister may specify the time or times when or the period or periods of time within which the health resource provider must comply with the directive.

"Directions not in notice

"(5) Despite subsection 21.1(2), a compliance directive may set out a direction that the minister did not propose in the notice under subsection 21.1(1).

"Varying

"(6) The minister may vary a compliance directive after it is issued if the change relates to a circumstance referred to in the notice under subsection 21.1(1)."

1450

The Chair: Speaking to the motion?

Mrs Witmer: I take a look at this motion and I think it's pretty heavy-handed. We're talking now about compliance directives, and if the government is committed to, in the first place, having negotiated agreements, I'm not sure these are appropriate in that context. It again speaks to the fact that one party has the ability to unilaterally change the terms at any time, and therefore the original agreement doesn't seem to have much in the way of certainty or clarity or mutuality.

I would have to, in particular, vote against 22(3)1, which requires the health resource provider to enter into an accountability agreement with the minister on the terms set out in the compliance directive. As I said, the compliance directive should not be there if you've got a negotiated agreement. Everything should be done in good faith.

I look at number 5, where you require the health resource provider to carry out or cause to be carried out an audit as directed by the minister. I don't believe a compliance directive should contain a direction that was not contained in the original notice. For those stakeholders who are going to be impacted by this changed amendment, I'm not sure that it's not worse than what we had before, and I don't think it reflects in any way the comments we heard, certainly from those who had a lot of concern around the accountability section. So I would not be able to support this.

The Chair: Any further speakers?

Seeing none, all those in favour? Those opposed? That motion is carried.

We've got an official opposition motion, page 52.

Mrs Witmer: I guess we're trying to look at a process. We've tried to involve and do it in the way of an order in council. We've tried to introduce arbitration. I guess this is another attempt on our part to make sure that some third party takes a look.

I move that section 22 of the bill be struck out and the following substituted:

"Compliance provisions

"22(1) If any party to an accountability agreement believes that another party has failed to comply with the terms of the agreement, the party seeking compliance shall send a notice in writing setting out,

"(a) the nature of the alleged breach of the agreement; and

"(b) the remedy sought.

"Meeting

"(2) Within 30 days of the giving of a notice under subsection (1), or such other time agreed to by the parties, the parties shall meet to determine if they can reach agreement on the matter.

"Mediator

"(3) If the parties cannot reach an agreement within 30 days of their first meeting, or such other time agreed to by the parties, a mutually acceptable mediator shall receive submissions from the parties, consider the issues in dispute, and meet with the parties.

"If cannot agree on mediator

"(4) If the parties cannot agree on a mediator, each party shall submit a list of three mediators to a judge of the Ontario Supreme Court, who shall consider any submissions the parties make and choose a mediator."

"Arbitrator

"(5) If the parties cannot reach agreement within 90 days from the appointment of the arbitrator, or such other time agreed to by the parties, a mutually acceptable arbitrator shall consider their submissions and decide the matter.

"If cannot agree on arbitrator

"(6) If the parties cannot agree on an arbitrator, each party shall submit a list of three mediators to a judge of the Ontario Supreme Court, who shall consider any submissions the parties make and choose an arbitrator."

This really goes back to making sure that this accountability agreement has accountability going both ways and speaks to the inappropriateness of compliance directives being imposed on just those other than the minister.

The Chair: Any further speakers?

There being none, all those in favour? Those opposed? That motion is lost.

Shall section 22, as amended, carry?

Those in favour? Those opposed? That motion is carried.

I draw your attention to page 53, which is not a government motion, as listed, but a recommendation. There are no amendments. The question is, shall section 23 carry? Any debate? Is everybody clear?

All those in favour of the motion? All those opposed to the motion? That section is lost.

Moving on to section 24, we've got a recommendation. Just give me two seconds to consult with the clerk.

We're going to have a brief recess for about two or three minutes, if people need to refresh their coffee or drinks.

The committee recessed from 1459 to 1505.

The Chair: OK, ladies and gentleman, can we come to order again? I've consulted with the clerk. On section 24, with the committee's concurrence, the best way to deal with this and give justice to both issues—one obviously is a recommendation from the government that the vote should go against section 24, and the official opposition has moved "that section 24 be struck out and the following substituted"—I'm going to propose that we reverse the order and deal with the official opposition notice first.

Mrs Witmer: I move that section 24 of the bill be struck out and the following substituted:

"Renegotiation

"24(1) Any party to an accountability agreement may at any time request a renegotiation of all or part of accountability agreement or an order or agreement under this part if there has been a material change in the ability of the party to meet its obligations.

"Meeting

"(2) Within 30 days of the giving of a notice under subsection (1), or such other time agreed to by the parties, the parties shall meet to determine if they can reach agreement on the matter.

"Mediator

"(3) If the parties cannot reach an agreement within 30 days of their first meeting, or such other time agreed to by the parties, a mutually acceptable mediator shall receive submissions from the parties, consider the issues in dispute, and meet with the parties.

"If cannot agree on mediator

"(4) If the parties cannot agree on a mediator, each party shall submit a list of three mediators to a judge of the Ontario Supreme Court, who shall consider any submissions the parties make and choose a mediator.

"Arbitrator

"(5) If the parties cannot reach agreement within 90 days from the appointment of the arbitrator, or such other time agreed to by the parties, a mutually acceptable arbitrator shall consider their submissions and decide the matter.

"If cannot agree on arbitrator

"(6) If the parties cannot agree on an arbitrator, each party shall submit a list of three mediators to a judge of the Ontario Supreme Court, who shall consider any submissions the parties make and choose an arbitrator."

Again, this refers to the ability that the legislation currently has to allow the minister to terminate an agreement or a directive or make a change. I guess we're suggesting again that negotiations take place.

We have heard how important it is to have stability within our health care system. It's absolutely essential that the health care providers can rely on the accountability agreements in place that they have negotiated with

the government. So we do not agree that, as stated in the government's bill, the minister should have the ability to terminate an agreement at any time. That certainly does not provide stability to the health care system.

As an example, let's take a look at SARS. During that time, the health system was faced with some challenges that were totally unforeseen and it did alter the course of events. Therefore, it's altogether reasonable to assume that health resource providers may possibly be confronted at some time with extraordinary circumstances that are going to severely impact their ability to fulfill their obligations under an accountability agreement. In order that we can provide for those situations, there has to be a provision not just for the minister terminating an agreement; there has to be a provision for renegotiating the agreement where there has been a material or significant change in the circumstances. This amendment would allow for that flexibility and would allow for both parties to have the opportunity, based on these unforeseen circumstances, to renegotiate an agreement. It doesn't give sole power to the minister to arbitrarily terminate an agreement.

The Chair: Are there any further speakers? It's unfortunate that Ms Martel isn't here, because I know she had a particular interest in this.

Mrs Witmer: She might like it.

The Chair: That's right. It's unfortunate.

Mr Klees: I think she would vote for it.

Mrs Witmer: Yes.

Mr Klees: Chair, I would like to suggest that you free up at least one of the government members who can vote the way Ms Martel would have voted on this.

Mrs Witmer: Brad?

The Chair: That would make them an official party if you moved.

Mr Duguid: I'm quite happy where I am, thank you.

The Chair: It could be expensive.

I was trying to stall a little bit in case Ms Martel came in, because I did want to offer her the opportunity to speak to this. I know she did have a particular interest.

Mr Klees, did you have any comments on this?

1510

Mr Klees: Perhaps while we're waiting we could get some explanation from the parliamentary assistant on the issue raised by Ms Witmer relating to the press release that leaves the impression with the public and the stakeholders that there is a negotiation that takes place and very clearly leaves out the fact that the final hammer is still there, giving the minister the ultimate and absolute authority to make the decision relating to this. We'd be very interested, first of all, why that was left out of the press release—although I think we know—and how the government can justify leaving a half-truth in the public domain.

The Chair: Are there any further speakers?

Ms Smith: I'd like to call the question.

The Chair: No further speakers?

Mr Klees: Is there a reason the parliamentary assistant isn't prepared to respond to that?

The Chair: Certainly it's her prerogative whether she responds or not.

Ms Smith: Exactly. The parliamentary assistant is not expected to respond to all your inquiries, Mr Klees, but thank you for them.

The Chair: I've just been advised by the clerk that if the question is called, it is not on the amendment; the question is actually on the section, so we would be voting on section 24, not on the amendment.

It would be my preference that we vote on the amendment.

Ms Smith: That's fine.

The Chair: I think everybody had exhausted their comments, in any event. We did extend some time in the hope that Ms Martel would join us. That appears to not be happening.

All those in favour of the amendment? Those opposed? That amendment is lost.

Moving on to the recommendation on section 24, any comments?

There being none, all those in favour? Those opposed? That motion is lost.

We are moving on to section 25 on page 56.

Ms Smith: I move that section 25 of the bill be struck out and the following substituted:

"Recognition of accomplishment

"25. If a health resource provider meets or exceeds all or part of the terms of an accountability agreement, the minister may, in his or her discretion, make an order directing that the accomplishment be recognized in any prescribed manner."

The Chair: Speaking to the motion?

All those in favour? Those opposed? That motion is carried.

Moving on to page 57.

Mrs Witmer: I move that section 25 of the bill be struck out and the following substituted:

"Recognition of accomplishment

"25. If an agency or entity that is the subject of an accountability agreement meets or exceed all or part of the terms of the accountability agreement, the minister may, in his or her discretion, make an order directing that its accomplishment be recognized in any prescribed manner."

The Chair: Are you speaking to the motion?

Mrs Witmer: Yes. Because the parties to an accountability agreement can only be the hospital corporation and the government, the word "person" should be deleted and, accordingly, the wording "his or her accomplishment" needs to be changed to "its accomplishment."

Ms Smith: I believe those changes were accomplished through the previous amendment that we just passed.

Mrs Witmer: If the parliamentary assistant gives me the assurance that that's captured there, I would withdraw that motion.

Ms Smith: Yes.

The Chair: Thank you, Ms Witmer, I appreciate that.

Shall section 25, as amended, carry?

Those in favour? Opposed? That motion is carried.

We are moving on to section 26, page 58.

Mr Kormos, the pages are all numbered at the top.

Mr Peter Kormos (Niagara Centre): Thank you kindly.

Ms Smith: Again, we have provided the members of the committee with a slight variation of pages 58 and 58(b). Do the members opposite all have that copy? It came during the coffee break, two pages.

Mrs Witmer: Yes, we do have it.

Ms Smith: You have it? OK, great. Ms Martel, are you OK with me reading through?

Ms Martel: Do you know what? I'm not sure. I'm sorry.

The Chair: It would be pages 58 (a) and (b) stapled together. I'm sure we can get you one quickly.

Ms Martel: Thank you. Sorry about that, Chair.

The Chair: No problem.

Ms Smith: Mr Chair, can I go ahead?

The Chair: You certainly can.

Ms Smith: I move that section 26 of the bill be struck out and the following substituted:

"Order—health resource provider

"26. (1) If the circumstance referred to in a notice under subsection 21.1(1) continues for more than 30 days after the notice was given by the minister, or if no notice was given by virtue of subsection 21.1(5), the minister may issue an order to the health resource provider.

"Compliance

"(2) The health resource provider shall comply with an order issued under subsection (1).

"Matters in order

"(3) An order issued under subsection (1) may require the health resource provider to comply with any directions set out in the order relating to any or all of the following:

"1. Requiring a health resource provider to comply with any part of a compliance directive that has been issued to the health resource provider.

"2. Requiring a health resource provider to comply with any direction that may be made in a compliance directive.

"3. Holding back, reducing or discontinuing any payment payable to or on behalf of a health resource provider by the crown in any manner and for any period of time as provided in the order and despite any provision in a contract to the contrary.

"4. Requiring a health resource provider to enforce any provision of a performance agreement with a chief executive officer.

"5. Varying any term of an agreement, as set out in the order between the crown and the health resource provider.

"Times for compliance

"(4) In an order under this section, the minister may specify the time or times when or the period or periods of time within which the health resource provider or chief executive officer must comply with the order.

"Direction not in notice

"(5) An order under this section may set out a direction that the minister did not propose in the notice under subsection 21.1(1).

"Varying

"(6) The minister may vary an order after it is issued if the changes relate to a circumstance which caused the order to be issued under subsection (1).

"Orders without notice

"(7) If, by virtue of subsection 21.1(5), the minister did not give notice under subsection 21.1(1) before issuing an order under this section, the minister shall, as soon as reasonably possible after issuing the order, provide the health resource provider with,

"(a) reasons for the issuance of the order;

"(b) the matters that the minister took into account in making his or her decision to issue an order; and

"(c) the matters that caused the minister to form his or her belief under subsection 21.1(5) and to not follow the procedures set out in subsections 21.1(1) to (4)."

The Chair: There is an amendment to the motion.

Ms Smith: I thought I saw Mrs Witmer moving while I was reading.

The Chair: That's right. The amendment will take precedence. We are now speaking to the amendment you have before you, moved by Mrs Witmer.

Mrs Witmer: I move that subsection 26(1), introduced by the government, be amended and the following subsection substituted:

"If the circumstance referred to in an order under subsection 21.1(1) continues for more than 30 days after the notice was given by the minister, or if no notice was given by virtue of subsection 21.1(5), the minister may refer the circumstance in writing to the Lieutenant Governor in Council who, acting in the public interest, may make an order dealing with the said circumstance."

It's the power that is given in the original amendment of the government that we have a lot of concern with and that I know the stakeholders in the province are very concerned with. This is our attempt to at least allow for the Lieutenant Governor in Council to make the order, and to do so acting in the public interest, rather than allowing the minister to hold the hammer over the head of the health resource provider.

1520

The Chair: It was the amendments last time that sparked a lively debate. Are there any further comments?

Ms Martel: The same as before: I'm going to vote against it, with all due respect to my colleagues, because the Lieutenant Governor in Council is essentially the cabinet, and I don't see any difference between the cabinet and the minister in terms of what is being done. There should be an independent process to deal with these issues.

The Chair: Any further speakers?

Voting on the amendment, those in favour? Those opposed? That amendment is lost.

Returning to the main motion on page 58: Ms Smith, any further comments?

Ms Smith: No, Mr Chair.

The Chair: Any further speakers? No speakers?

All those in favour? Those opposed? That motion is carried.

Shall section 26, as amended, carry?

Those in favour? Those opposed? Section 26 is carried, as amended.

Moving on to—

Interjection.

The Chair: I'm sorry. I'm getting ahead of myself again. Mrs Witmer, I forgot to give you an opportunity to move and speak to the motion on page 59.

Mrs Witmer: In light of the fact that not one of our amendments has been given due consideration and passed by the government, and the fact that we've already now passed the new section 26 that the government has put in place, I will withdraw this amendment. The intent of our amendment here was that, "The minister shall continue to provide funding to a health resource provider at all times until an agreement is reached, or determined by an arbitrator"—in this case, there's not going to be one—"during the negotiation of, dispute over compliance with, or renegotiation of an accountability agreement." I just want some reassurance that the funding is going to be provided until, I guess, the heavy hammer comes down. Can someone give me that reassurance?

The Chair: It seems to be a reasonable question. Ms Smith, would you like to refer that to the appropriate person?

Ms Smith: I will try, Mr Chair. The appropriate people are sorting themselves out.

The Chair: I think the question is fairly straightforward. Mrs Witmer, do you just want to summarize the question perhaps?

Mrs Witmer: I simply want to know if the minister is going to continue to provide funding to a health resource provider until such time as an agreement is reached or, in this instance, since there's not going to be the due process we had hoped for, until a compliance directive is issued.

Mr Thomas O'Shaughnessy: The bill does not affect the ministry's funding of any provider of any services at all, as it's currently written. That's not the intent whatsoever.

Mrs Witmer: This whole section had to do with, and originally spoke to, the whole issue of the consequences of failure. I'm not sure that you've answered my question, and I'm not sure whether or not the government has the answers. I guess that is why I have a lot of unease with the process that we have embarked on today in regard to this part III, Accountability. It seems to me that these provisions have been somewhat hastily drafted. There's not been ample opportunity for those who are going to be impacted to take a look at what the real consequence of the changes to the amendments are. We certainly have not been able to take a look at what the consequences might be. It seems that even the ministry staff are not quite sure of the consequences. For that reason, I hope the government would bring these back for further consultation with stakeholders after second reading of the bill.

Mr Klees: I'm interested in Mr O'Shaughnessy's comment that this bill is not intended to affect funding in any way, and yet I thought that we had just passed an amendment. Paragraph 26(3)3 refers to "holding back." It refers to an order that can be issued that "may require the health resource provider to comply with any directions set out in the order relating to any or all of the following," and then it talks about "holding back, reducing or discontinuing any payment payable to or on behalf of a health resource provider by the crown in any matter for any period of time as provided in the order and despite any provision in a contract to the contrary."

Mr O'Shaughnessy: If I could respond to Mrs Witmer's original question and perhaps clarify what I was trying to say: In response to Mrs Witmer's question, the bill doesn't affect any money currently funded under the existing arrangements that the ministry has with its partners, the organizations that provide services that the ministry funds currently.

Mrs Witmer: But we're talking about the new orders and the new accountability agreements. Are they going to have the power, as has been referred to here under 26(3)3, to hold back, reduce or discontinue?

Mr O'Shaughnessy: Certainly I don't want to comment on circumstances and a context that are not in front of me, or where we don't understand the circumstances that may be involved at the time. But yes, that's what the bill does say: Given the circumstances that may transpire at the time, there are powers or authorities in the bill which provide authority to vary or hold back certain funding based on exceptional circumstances. Of course, the intent of the bill is never to get to that point.

Mr Klees: So what you're saying is that, contrary to what you first said, this bill does provide for the discontinuation of existing funding?

Mr O'Shaughnessy: No, that's not what I said. You're skewing the words, Mr Klees. The bill does not affect funding or money paid to providers under existing arrangements. I'm not going to comment on the circumstances that might transpire once the bill is passed, or circumstances that may exist between a health resource provider and the ministry.

The Chair: The question has been asked and answered. I think we're maybe straying into the political realm with the staff. If you have a question that would be appropriately answered by a staff person, you've got Mr O'Shaughnessy there.

Ms Martel: It's the use of the word "existing." I'm wondering, then, is what you're talking about the funding that the minister announced for hospitals a couple of weeks ago? Is that that $385 million or so that is the pot of money in question, to which this particular section would apply? I certainly have heard the minister say that hospitals have to sign accountability agreements before they get some of that money. Is that particular section, where we're talking about holding back, a reference to the new money that the minister announced a couple of weeks ago?

Mr O'Shaughnessy: It's in reference to existing funding arrangements. I know there are ongoing discussions and dialogue between the ministry and its hospital partners with respect to accountability agreements that will need to be signed for accessing the new money that was announced by the minister.

1530

Ms Martel: I don't want to put words in anybody's mouth, but I heard you tell Mr Klees that it didn't have anything to do with existing arrangements, and you just said it does have something to do with existing funding arrangements. I'm not trying to cause a problem here, but I really would like some clarification.

Mr O'Shaughnessy: I'm making a distinction between the existing arrangements and the funding that was just announced by the minister. There are ongoing discussions and dialogue with respect to that specific pot of money, that specific funding.

Ms Martel: Yes. And are the provisions of this bill applicable only to new money? I assume the accountability agreements are going to take into account everything that is done in a hospital, not just what might be done with the new money. Am I correct?

Mr O'Shaughnessy: No accountability agreements have been signed at this point, and I don't think I'm going to comment any further on that question.

Mrs Witmer: Well, I guess we do need an answer, because I think there's a lot of concern amongst the hospital community as to whether or not they are going to receive that $385 million without signing the accountability agreements that are referred to in this legislation. If they are indeed going to be required to sign the accountability agreements we're talking about here, then somebody is really holding a big club over the heads of the hospitals, and I think it really was quite premature to indicate that this money would be forthcoming at a time when the government has not even passed this bill.

Ms Smith: If I could just clarify, I think we're on two different topics. We're talking about the funding that was announced two weeks ago and performance agreements that will be attached to that funding, which, as you've indicated, is premature; it's not "these" accountability agreements, because this legislation is not passed yet.

If it would please this committee, I will undertake to get a clarification on your original question with respect to section 26 and also clarification with respect to the new funding and the expectations around performance agreement signatures with that new funding. I'll try to provide that by the end of today. If we could move on to the next section, I think that might answer your concerns and allow us to move ahead.

The Chair: That's what I was going to suggest.

Ms Martel: Just on that, Mr Chair, can I get a clarification of the difference between performance agreements and accountability agreements as well?

The Chair: At the same time?

Ms Martel: Yes.

The Chair: True to form, we got stuck on an amendment that was going to be withdrawn.

Just to be clear now, shall section 26, as amended, carry? All those in favour?

Ms Smith: We've already passed it.

The Chair: It did already pass, but just to be clear, because we did go back on that amendment.

Those opposed? That section is carried.

Moving on to 26.1, page 60.

Ms Smith: I move that the bill be amended by adding the following section:

"Notice in exceptional circumstance

"26.1(1) The minister may give notice in writing to a chief executive officer and a health resource provider where:

"(a) the minister has issued a compliance directive or an order under subsection 26(1) to a health resource provider in respect of non-compliance by the health resource provider under the accountability agreement or any provision of this part or by its chief executive officer under a performance agreement or any provision of this part which the chief executive officer is required to comply with;

"(b) the minister believes that the health resource provider has not complied with an accountability agreement or any provision of this part or the chief executive officer has not complied with the performance agreement or has not complied with a provision under this part which the chief executive officer is required to comply with, despite a compliance directive or an order under subsection 26(1); and

"(c) the minister believes that, even though attempts have been made to require the health resource provider or chief executive officer to comply, an exceptional circumstance may exist which may require that an order be issued under subsection (5) to the chief executive officer and the health resource provider.

"Contents of notice

"(2) A notice under subsection (1) shall briefly describe,

"(a) the reasons for the notice; and

"(b) any directions that the minister proposes to recommend be made in an order under subsection (5)

"Dispute resolution process

"(3) After receiving a notice under subsection (1), where a chief executive officer or a health resource provider disputes any matter set out in the notice,

"(a) the minister and the health resource provider and the chief executive officer shall discuss the circumstances that resulted in the notice or any directions that are proposed in the notice;

"(b) the minister shall provide to the chief executive officer and the health resource provider any information that the minister believes is necessary to an understanding of the reasons for the notice or the directions that are recommend in the notice; and

"(c) the chief executive officer or the health resource provider may make representations to the minister about the matter set out in the notice.

"Consideration

"(4) The minister shall consider any representations made under subsection (3) before making a recommendation to issue an order under subsection (5).

"Order in exceptional circumstances

"(5) The Lieutenant Governor in Council may make an order to the chief executive officer and the health resource provider, where,

"(a) the Lieutenant Governor in Council believes that an exceptional circumstance exists which makes it necessary to issue an order;

"(b) a period of 30 days has passed since the minister gave notice under subsection (1) and the circumstance of non-compliance that caused the notice under subsection (1) to be issued has not been remedied to the satisfaction of the minister;

"(c) the minister has recommended in writing to the Lieutenant Governor in Council that the order be made; and

"(d) the minister has notified the chief executive officer and the health resource provider that he or she has made the recommendation to the Lieutenant Governor in Council and the reasons for the recommendation.

"Directions

"(6) An order issued under subsection (5) may require the chief executive officer and health resource provider to comply with any directions set out in the order relating to any or all of the following:

"1. Holding back, reducing or varying the compensation package provided to or on behalf of a chief executive officer in any manner and for any period of time as provided for in the order and despite any provision in a contract to the contrary.

"2. Requiring a chief executive officer to pay any amount of his or her compensation package to the crown or any person.

"3. Any prescribed matter.

"Compliance

"(7) A chief executive officer and a health service provider shall comply with the directions set out in the order.

"Times

"(8) In an order under subsection (5), the Lieutenant Governor in Council may specify the time or times when or the period or periods of time within which the chief executive officer and health service provider must comply with the order.

"Direction not in notice

"(9) An order under subsection (5) may set out a direction that the minister did not propose in the notice under subsection (1).

"Varying

"(l0) The Lieutenant Governor in Council may vary an order after it is issued if the change relates to a circumstance which caused the order to be issued under subsection (5).

"Maximum limit

"(11) An order issued under subsection (5) shall not require the payment by the chief executive officer of more than, or shall not hold back, reduce or vary the compensation package by more than, l0% of the compensation package in respect of the calendar year during which the non-compliance occurred which caused the notice under subsection (l) to be given.

"Prohibition

"(12) Where an order is issued under subsection (5) that holds back, reduces or varies the compensation package of a chief executive officer or requires the chief executive officer to make a payment,

"(a) no person shall provide any payment, compensation or benefit to the health resource provider or the chief executive officer or to any other person on behalf of the health resource provider or the chief executive officer to compensate for or reduce or alleviate the effects of the order on the chief executive officer, despite any provision at law or in a contract to the contrary; and

"(b) the health resource provider or the chief executive officer shall not accept or permit any other person to accept on its or his or her behalf any compensation, payment or benefit to compensate for or to reduce or alleviate the effects of the order on the chief executive officer, despite any provision at law or in a contract to the contrary.

"Civil enforcement

"(13) An order under subsection (5) that requires a chief executive officer to pay an amount may be filed by the minister with a local registrar of the Superior Court of Justice and enforced by the minister as if it were an order of that court.

"Same

"(14) Section l29 of the Courts of Justice Act applies in respect of an order filed with the Superior Court of Justice, and the date of filing shall be deemed to be the date of the order."

Mr Chair, I misspoke under subsection 26.1(6). Might I reread subsection 26.1(6), or could we just delete paragraph 3 of subsection 26.1(6)?

The Chair: The clerk was suggesting we deal with the omission by an amendment.

Ms Smith: I'm in the clerk's hands.

Mr Klees: I think we can just scrap the bill.

Ms Smith: Mr Chair, this has to do with the amendment that we spoke of this morning. It was the one amendment that we presented late. We were seeking to remove paragraph 3 of subsection 26.1(6).

The Chair: If you'd like to speak to that motion, in the interim we can see what we should do with paragraph 3, now that it has been read into the record.

1540

Ms Smith: OK. I think our amendments speak for themselves. We have had a number of discussions around this particular amendment, and we believe that there are all the safeguards in place that address the concerns raised by a number of stakeholders in our discussions with respect to this bill.

Mr John O'Toole (Durham): I was at committee this morning, the pre-budget hearings, but this afternoon I was in my office listening to these clause-by-clause discussions. The points that have been raised by Ms

Martel and Ms Witmer prompted me to come down here and be on the record.

This is really quite shocking from a non-political perspective. The current amendment that we're dealing with repeats the phrase that the ministry staff told us was not in the bill. That clarification, I know, has been the holdback provision. This goes further to make sure that the discounting of the CEO's or other health care provider's income to the extent of 10%—it's almost very difficult to accept; let's put it that way. They're providing in many cases—emergencies or whatever circumstances we find in our hospitals—yet they're going to spend all this time, effort and resources trying to comply with the ministry's direction. Also, I read in the last portion here, which is the civil enforcement portion, about allowing it to go to the Superior Court of Justice.

I just wanted to be on the record in saying I'm frightened by the draconian nature and statements within this bill. I met last week with the CUPE workers as well as a group of other health care providers, nurses and others, who are living in fear. You've unsettled the environment to the extent that other members from all caucuses—I'm sure from your own caucus—don't fully realize the state that you've created in the health care system today. I'm shocked.

I want to be on the record as strongly as possible in support of the hospital in my community. Their share of the $358 million will not allow them to balance their budget. They know that now. We all know that 80% of their budget is wages and benefits. If they don't comply with the contractual arrangements that have been discussed with this new money, then clearly there will be court action.

I'm not sure the members on the government side really understand completely what this bill is doing. It's a comment only. I appreciate the Chair giving me the liberty to put my comments on behalf of my constituents in the riding of Durham.

Ms Martel: We heard repeatedly from hospital boards during the course of the public hearings who said that the CEO is their employee and it is their responsibility as board members to deal with issues arising with respect to the CEO—performance, salary, discipline if necessary etc. They made it absolutely clear on any number of occasions to the committee that they would see it as an intrusion—that's probably a polite term to use—by the minister if the government kept the powers that were in the bill unamended that essentially allow the minister to make a grab for compensation as a penalty for non-compliance. They made it very clear that it was their role to deal with those very serious and substantial issues and that they would do that if it was necessary and required of them.

The motion that we have before us today absolutely flies in the face of everything we heard from those volunteer boards about their concerns with respect to their CEOs. I say again, I do not understand what it's going to take for the government to understand the impact the amendments are going to have on volunteer boards, which I think will not want to be party to anything like this and will just resign en masse.

Mrs Witmer: Despite the claims that have been made by the government as far as discussions with stakeholders regarding these amendments relating to these accountability agreements, I just want you to know that I understand, because we've certainly been hearing from people throughout the course of the day, that the health stakeholders are not happy with these amendments and they're not happy with this amendment, and I would concur with Ms Martel. We heard about the problem with the minister dealing with the chief executive officer. We heard about the need for there to be a single point of accountability, and that is the CEO to the board, not to the board and the ministry. You simply cannot have dual accountability, as is being suggested within this bill.

We know that the corporation is accountable for the corporate obligations. We know that it's the board of a hospital that holds its CEO accountable in order to ensure that the corporation honours its corporate obligations. We also know that boards are held to the highest fiduciary responsibilities and that they're required to act honestly and in good faith. This bill seems not to take into account that boards do take their fiscal obligations very seriously. They take into consideration the interests of the community they serve. You should also remember that a board can hold the CEO accountable for ensuring that corporate obligations are met.

These provisions are ones that we simply cannot support. I would again emphasize that because there has been such a large rewrite—in fact, I would say, a complete revamping of the entire part III, the accountability—I hope the government is prepared to allow this bill to go out again for further consultation after second reading. I'll tell you, nobody knows right now what the implications are of the changes that have been made, because we've got a real rewrite of the bill right here.

The Chair: Are there any further comments? Just to be clear—I've been conversing with the clerk—there are a few ways of dealing with this. One way would be to have Ms Smith read the entire motion, omitting (6)3. The other way of doing it, and which seems to me to be the most common sense way, would be for me to look everybody in the eye—and you understand that the motion is actually everything that Ms Smith read with the exception of 3, which is on page 60(c) in the centre of the page. The line that would be taken out would be, "Any prescribed matter."

Any member of the committee, just so everybody understands, has the right to ask Ms Smith to read the entire motion all over again.

Mr Klees: Chair, I am very tempted, but I will hold myself back.

The Chair: Just so that everybody understands, the motion on the floor is the motion that was moved by Ms Smith, with the exception of (6)3 on page 60(c).

Ms Martel: Recorded vote.

Ayes

Delaney, Duguid, Leal, Matthews, Smith, Wynne.

Nays

Klees, Martel, Witmer.

The Chair: The motion carries.

Section 27.

Ms Smith: I move that section 27 of the bill be struck out and the following substituted:

"Where change in employment

"27(1) Where, as the result of entering into a performance agreement under subsection 21(6) or the making of an order made under subsection 26(1) or 26.1(5), there is a material change in a chief executive officer's terms of employment with a health resource provider, including a holdback, reduction or variation of the compensation package or a payment by the chief executive officer,

"(a) the change shall be deemed to have been mutually agreed upon by the chief executive officer and the health resource provider;

"(b) no proceeding shall be brought by or on behalf of the chief executive officer for any payment, compensation, benefits or damages from the health resource provider, the minister or any other person, despite any provision to the contrary at law or in his or her contract of employment, and

"(c) the chief executive officer shall not receive any payment, compensation, benefits or damages from the health resource provider, the minister or any other person, despite any provision to the contrary at law or in his or her contract of employment.

"Services

"(2) Subsection (1) applies with necessary modifications to a contract of agreement for services between a health resource provider and a chief executive officer."

1550

The Chair: Speaking to this motion?

Ms Martel: Very briefly, this new section is as draconian as the provisions that appeared in the original bill, and I just can't support this.

Mr O'Toole: Just to reiterate the strong language, specifically here, it says, "despite any provision to the contrary at law." It overrides actual civil law, I gather, and it's also stripping contracts here, the contract with the employer. That really is quite draconian.

Mrs Witmer: Again, as we've said before, it still gives a tremendous amount of power to the minister and only to the minister. The accountability throughout this section continues to go only one way, and for the hospital board or for the CEO, there's absolutely no recourse. It's interesting how in clause (a), "the change shall be deemed to have been mutually agreed upon by the chief executive officer and the health resource provider." That is a joke. It's the minister who has the power and not these other individuals.

Mr Klees: Further to Mrs Witmer's reference to 27(a), for us to be entertaining legislation that would actually include this line is beyond me. I just can't understand how you can justify that. You're not only overtly saying that the minister will do whatever he or she chooses to do, but then you cover yourself off very nicely by legislation and say that regardless of what the minister has chosen to do, you'll be deemed to have agreed to it.

Now I understand why the parliamentary assistant is so adamant in reassuring us all that this is going to be negotiated, because at the end of the day, regardless of how those negotiations go, the word will be that they agreed to it because they will have been deemed to agree to it.

This does not get any more archaic than anything I have ever seen. I can't believe that Mr Bob Delaney—an upright individual who I understand was actually involved in helping to draft a lot of the policies of the Liberal Party coming into this last election, who I know is very disappointed at all those unkept promises of those good policies that he had a part in writing—now has to sit here and swallow this. A bitter pill it must be, particularly for Mr Delaney. I urge you to rise up, take a stand, let them know you're not going to go down this road.

Chair, even you—I know that you don't have a vote here and so you're safe, but you're shaking your—

The Chair: I knew you'd get around to me eventually.

Mr Klees: But you're shaking your head as well.

In all seriousness, this is an insult to the men and women who serve us so well as CEOs and as members of boards of directors in hospitals right across the province. We just have to do what we can to express our frustration, our opposition to this. I would ask for a recorded vote when we vote on this to see whether or not some member of the government has the courage to vote against this.

The Chair: Any further speakers? Seeing none, a recorded vote has been called for.

Ayes

Delaney, Duguid, Leal, Matthews, Smith, Wynne.

Nays

Klees, Martel, Witmer.

The Chair: That motion is carried.

I'm going to call a very brief recess, for about two minutes, and allow Mr Leal to assume the chair for a period of time.

Mr Klees: We can't take it. We're so frustrated.

The Chair: You're calling me names. I'm going to leave now.

The committee recessed from 1556 to 1605.

The Acting Chair (Mr Jeff Leal): We'll bring the committee proceedings back to order. The next item we

deal with—I will ask if everybody has their paperwork there.

Shall section 27, as amended, carry?

Mr O'Toole: Recorded vote.

Ayes

Delaney, Duguid, Matthews, Smith, Wynne.

Nays

Klees, Martel, Witmer.

The Acting Chair: It's carried.

We'll now deal with section 28.

Ms Smith: I move that section 28 of the bill be struck out and the following substituted:

"Where change in funding, agreement etc

"28. Where, as the result of an order made under subsection 26(1), any funding or payment by the crown to a health resource provider is withheld, reduced or discontinued, or any term of a contract or agreement between the crown and a health resource provider is varied, the reduction, variance or discontinuance,

"(a) shall be deemed to have been mutually agreed upon by the parties; and

"(b) does not entitle the health resource provider to payment or compensation, despite any provision to the contrary at law or in a contract or agreement."

The Acting Chair: Discussion?

Mrs Witmer: Again, this is a tremendous insult in clause 28(a): "shall be deemed to have been mutually agreed upon by the parties" when "funding or payment by the crown to the health resource provider is withheld, reduced or discontinued, or any term of a contract or agreement between the crown and a health resource provider is varied." It's unbelievable that there's just no recourse. There's no accountability on the part of the minister at all. It really is an insult to that health resource provider.

Mr O'Toole: I appreciate being able to put a voice to the region of Durham and their concerns with this bill generally. Specifically, I do want to mention that Anne Wright, on behalf of Lakeridge Health Corp, serving Oshawa, Port Perry, Bowmanville and Whitby, did make a presentation to the committee and I did meet with them. I've reviewed their presentation. In fact, these very sections we're dealing with are where these amendments certainly don't do it. I appreciate the work of the volunteer boards, people like Anne Wright, across the province.

When "mutually agreed upon" is implied, this implication is sort of in a devious way, if that's an appropriate word, being able to do the press release and say: "Boards have agreed with the following conditions"—a 10% reduction of anybody that has a deficit, for instance. I can just see it.

I also want to put on the record, quite sincerely, and not hoping to upset anyone, that I'm quite disappointed with the ministry staff person today in response. It almost had a political tone to it. I'm not accusing anyone. What I'm trying to say is, here again in this section it says very clearly that "payment by the crown to a health resource provider is withheld, reduced or discontinued, or any term of a contract...." The implication there is clear that they will hold back money if you don't provide certain outcomes.

I personally feel that the appropriate response from a non-political person would have been that that's a political question, because it is up to the minister. All of this is by the direction of the minister. Even the mutually agreed upon language that's been restated in the last three or four amendments I've been party to is language that is strange, to where it is circumventing the law. In fact, in the previous amendments we dealt with, it actually circumvents the law. "Contrary to any existing law," it says, I believe.

I'm wondering if Ms Wynne and others and you as well, Mr Leal, really appreciate what you've done for these community-based hospitals, volunteer boards, making decisions to provide services, in many cases at times of huge outbreaks or circumstances that are beyond their control. They can reduce the person's pay, it says, by 10%. It also says they can withhold payment or discontinue or, in fact, fine. In the sections further on, there are fines involved. I can't be supporting this bill, and I want to be clearly on the record in support of the health care providers in my community of Durham.

Ms Martel: Very briefly, here again with this amendment we see the huge contradiction with what the minister said publicly about this bill; that is, that these accountability agreements are going to be negotiated, which he reiterated even again this afternoon in a press release and upstairs in a press scrum that he had outside the Premier's office at 3 o'clock. You have him saying that these are going to be negotiated, and you have the actual text of the bill, the actual provisions, which are completely contrary to his statements—completely contrary.

Here we have another section where the minister can unilaterally make an order to reduce funding, change funding or discontinue funding per hospital agreements that the ministry has. That is completely unacceptable.

The provisions here are just as draconian as the provisions that the previous government had in Bill 26. The Liberals campaigned on a platform that they would be different, and I see no change.

1610

Mrs Witmer: I would just like to emphasize the fact that despite what the government has been saying about the consultations it's had with stakeholders in order to try to get this bill right, which started off with the wrong tone—and certainly a lot of sections have now been totally rewritten—this part III, the accountability section, still does not respond to the concerns that have been brought to our attention by the stakeholders, particularly the hospital association. I'm going to again ask the government to consider this bill going out for further

consultation after second reading. We are seeing here a total rewrite of part III. We've not been given adequate time to review these recommendations, nor have the stakeholders.

This is every bit as draconian and heavy-handed and unprecedented as anything that we have seen. It still gives all of the power to the minister. After 60 days, if there can't be an agreement negotiated, he or she has the power to force the health stakeholders to comply. I can tell you that this needs further study, and this is very, very unlike what the government said in the press release today. It says here, "accountability agreements will be negotiated between boards and the minister." That is not true. It's not accurate. Also, this press release starts out saying, "The McGuinty government took a major step forward in banning pay-your-way-to-the-front-of-the-line health care" as they took a look at this bill today.

Folks, we didn't do anything to do that. You didn't want to accept my recommendations to take a look at the issue of quality and accessibility and reducing waiting times. So that's totally misleading. This entire press release is misleading. You have not demonstrated your commitment to medicare in the amendments that you've brought forward.

The Acting Chair: Any further comment?

Ms Martel: Recorded vote.

Ayes

Delaney, Duguid, Matthews, Smith, Wynne.

Nays

Klees, Martel, Witmer.

The Acting Chair: It's carried.

Shall section 28, as amended, carry?

Ms Martel: Recorded vote.

Ayes

Delaney, Duguid, Matthews, Smith, Wynne.

Nays

Klees, Martel, Witmer.

The Acting Chair: Carried.

Now on to section 29.

Ms Wynne: I move that section 29 of the bill be struck out and the following substituted:

"Information

"29(1) For the purposes of carrying out the provisions of this part, the minister may require any health resource provider or chief executive officer to provide the minister with a performance agreement or any information that the minister considers necessary other than personal health information, in such form and at such times as the minister may require, and the health resource provider or chief executive officer shall comply with the minister's requirement.

"Posting and distribution

"(2) A health resource provider shall post in a conspicuous place or distribute all or part of any accountability agreement, notice under subsection 21.1(1), compliance directive, order issued under section 26(l), notice under subsection 26.1(l) or order issued under subsection 26.1(5) when ordered to do so by the minister, even if this results in the disclosure of personal information.

"Public disclosure

"(3) The minister shall disclose to the public all or part of any accountability agreement, notice under subsection 21.1(l), representations under subsection 21.1(4), compliance directive, order issued under subsection 26(1), notice under subsection 26.1(1), representations under subsection 26.1(3), order issued under subsection 26.1(5) or any enforcement action taken by the minister even if personal information is contained in what is disclosed, if the minister is of the opinion that disclosure would promote accountability.

"Offence

"(4) Every person who fails to provide a performance agreement or information as provided in subsection (1) or refuses to post or distribute as required by subsection (2) is guilty of an offence and on conviction is liable to a fine of not more than $10,000.

"Definition of 'personal health information'

"(5) In subsection (1),

"'personal health information' means information, other than information referred to in subsection (6), that is in oral or recorded form, if the information,

"(a) is information that identifies an individual or for which it is reasonably foreseeable in the circumstance that it could be utilized, either alone or with other information, to identify an individual, and

"(b) is information that,

"(i) relates to the physical or mental health of the individual, including information that consists of the medical history of the individual's family,

"(ii) 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,

"(iii) is a plan of service within the meaning of the Long-Term Care Act, 1994 for the individual,

"(iv) relates to payments or eligibility for health care in respect of the individual,

"(v) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,

"(vi) is the individual's health number, or

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

"Exception

"(6) 'Personal health information' does not include identifying information contained in a record that is in the custody or under the control of a person if,

"(a) the identifying information contained in the record relates primarily to one or more employees or other agents of the person; and

"(b) the record is maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employees or other agents."

Mr Chair, I just note that this amendment is designed to narrow the information-gathering provisions to health resource providers and CEOs only and to model the definition of "health information" on Bill 31's definition.

The Acting Chair: Discussion on the government motion?

Mrs Witmer: We have another example here of a total rewrite of section 29 within this accountability section. We have no way of knowing whether or not this section does what it purports to do, and we have no way to ascertain what some of the consequences might be. There has been no opportunity for stakeholders in the province to take a look and review this. Again, I would just urge the government to send this bill back for further consultation.

Maybe Ms Martel did the right thing today. She thought the entire bill should be withdrawn. I can certainly tell you, the way we're going about making changes to the bill has lead me to the conclusion that perhaps that's what we should have done, because here's another section that has been totally replaced. This bill not only had the wrong tone, it was really sloppily drafted.

The Acting Chair: Further discussion of the government motion?

All in favour of the government motion? Opposed? It is carried.

We now deal, Mrs Witmer, with your amendment.

Mrs Witmer: In light of the comprehensive rewrite, I guess this amendment no longer makes any sense, so we'll have to withdraw it. How can we be responding to a bill when the government is rewriting every section? We can't.

1620

Ms Wynne: I'd just like to make a comment that the whole purpose of the hearings that have been held on this bill has been to make changes to the bill. I understand that there may be a misunderstanding of what consultation is for, but that has been the purpose, and the extensive changes to the bill reflect the extensive hearings and the conversations with the stakeholders.

Mr O'Toole: That has precipitated a comment I would make myself. Ms Wynne has made the point, really. Consultations, it has been reported in my area, have been a sham, because the amendments we're making here are in fact just tidying up some language issues and clearly leaving the control in the minister's hands, and forced compliance. If they are of the view that this is consultation, then we're in for a very difficult three or four years ahead. I feel badly for the volunteer boards and the health care providers, not just the victims of situations in hospitals where they're dealing with contagious, infectious diseases etc. There's no respect in this bill. That's ultimately what it comes down to: respect and working with the people who are trying to provide an essential service. And here we have the minister prepared to disclose information in the section we just voted on.

I agree with Mrs Witmer: The most immediate response I have is to continue the consultations. We all know that the 10% increase a year in health is just not sustainable. I think you would recognize it's 50% of the budget, close to it, and we need to find better relationships and innovative responses to health care, and this bill clearly isn't going that route at all. So I won't be supporting it in any respect.

Mr Klees: I shouldn't respond, but I'm forced to, to Ms Wynne's comment about us not knowing about consultation. She may not know this, because she's new to Queen's Park, and in that sense I cut her some slack, but the fact of the matter is that the whole concept of doing committee consultations after first reading was something we introduced as a government. For Ms Wynne to suggest that somehow they are bringing this new concept of consultation to Ontario—there isn't a stakeholder who has come before this committee who likes their definition of consultation. It's one thing to listen to people; it's another to hear them.

I'll grant her that she has listened to many people over the last number of weeks, but they haven't been heard. That's our point, and that's why we're frustrated today. That's why there are many others frustrated today, and that's why there are some stakeholders who are, as Mr O'Toole said, afraid today.

At the end of the day, the Minister of Health does have the hammer. One of those hammers is the purse that feeds hospitals, that in fact feeds the fee schedule that is under negotiation now, and that feeds the expansion of hospitals right across the province that are at various stages of construction. What this government has not heard is that business cannot continue under the threat of this bill. This government is going down a path that they will regret.

Mr Duguid earlier made reference to the fact that we have to have accountability. That's not being debated at all. We absolutely agree that there has to be accountability. But there also has to be a respect for contracts. There has to be a mutual respect for that accountability process. There has to be accountability on the part of the government as well to the good people in this province who are giving of themselves, whether it be through a professional career or through volunteer service to our communities. This government has not heard those stakeholders, and that's why we're sitting here with a pile of amendments, not one of which has been voted for by the government members—not one of them. We're not suggesting we have all the answers but, surely to goodness, one or two amendments put forward by the opposition on behalf of stakeholders would have merited approval by the government. Not one.

So not only have they not heard stakeholders, they have not given any consideration to the work that's been done by the opposition. It's not a good day for the gov-

ernment of Ontario. I predict that Minister Smitherman will regret having moved forward with this bill and not taken our advice to retrench, go back to the drawing board and do what has to be done to ensure that there is co-operation with community hospitals and with our professional groups in this province to deliver health care efficiently and in an accountable manner. This bill is not going to do it.

Mr Duguid: The government members on this side are not going to sit here and be lectured about consultation by members of a government that frankly never knew the meaning of the word "consultation." We're talking about members of a government that imposed amalgamations without consultation on cities that didn't want them. We're talking about a government that imposed supervisors on hospitals, imposed supervisors on boards of education. We're talking about a government that frankly took very few bills out for consultation, like we have here.

This process has been a very valuable process. We've taken a lot of good ideas from all of the stakeholders throughout the province on this bill, and there are a lot of good ideas in the amendments that have come forward that go a long way to meeting the concerns that have been addressed.

But at the end of the day, we have to be responsible to the people of this province to move this health care system along and bring reform and changes. The previous government could not accomplish that. The people of this province have elected us to do that, and we will proceed. We will do it. We'll get this job done.

Mrs Witmer: I would just remind Mr Duguid that I think he's lost sight of the fact that those supervisors he talked about—that power was not totally in the hands of any minister. That was through an order in council. I would tell you that the power you've given the minister in this bill goes beyond anything we've ever seen in this province.

Do you know what? You were going to be the government that was different, decentralized. Well, that isn't what this bill is doing. You're centralizing power in the hands of a minister.

Mr Duguid: We're getting results is what we're doing.

Mrs Witmer: OK for you.

The Acting Chair: Further discussion?

Shall section 29, as amended, carry? All in favour? Opposed? It's carried.

Ms Smith: I move that section 30 of the bill be struck out and the following substituted:

"Non-liability

"30(1) No compensation or damages shall be payable by the crown, the minister or an employee or agent of the crown or minister for any act done in good faith in the execution or intended execution of a duty or authority under this part or the regulations, or for any alleged neglect or default in the execution in good faith of any such duty or authority.

"Same

"(2) No action or proceeding for damages or otherwise, other than an application for judicial review, shall be instituted against the crown, the minister or an employee or agent of the crown or minister for any act done in good faith in the execution or intended execution of a duty or authority under this part or the regulations or for any alleged neglect or default in the execution in good faith of any such duty or authority."

The Acting Chair: Discussion on the government motion?

All in favour of the government motion? Opposed? Carried.

Ms Witmer, please, your amendment.

Mrs Witmer: I think, again, we have an example here of an amendment being totally rewritten by the government, and so we have to withdraw this because there's nothing we can amend.

The Acting Chair: Shall section 30, as amended, carry?

All in favour? Opposed? Carried.

Ms Smith: I move that section 31 of the bill be struck out and the following substituted:

"Offence

"31(1) Subject to subsection (2), every health resource provider that fails to comply with an order under subsection 26(1), every health resource provider or chief executive officer who fails to comply with an order made under subsection 26.1(5), every person who fails to comply with subsection 26.1(12) and every person who wilfully attempts to circumvent or obstruct compliance with an order under subsection 26(1) or 26.1(5) is guilty of an offence.

"Exception

"(2) Despite subsection (1), where a health resource provider consists of a board of trustees of a non-profit oriented entity, an individual member of the board of trustees is not liable to a conviction for failing to comply with an order under subsection 26(1), if that individual receives no compensation of any kind for being a member of the board of trustees.

"Penalty—individual

"(3) An individual who is convicted of an offence under this section is liable to a fine of not more than $10,000.

"Penalty—corporation

"(4) A corporation that is convicted of an offence under this section is liable to a fine of not more than $25,000."

1630

The Acting Chair: Discussion on government motion 31?

Mr O'Toole: This is draconian, thoughtless provocation where people are going to be deemed guilty of an offence in groups and fined. It's just unconscionable, and the tone here is really more of substance than the bill itself. The tone of the bill is even worse.

The Acting Chair: Any additional discussion?

All in favour? Opposed? It's carried.

Section 31, as amended: All in favour? Opposed? Carried.

Section 32.

Ms Wynne: I move that subsection 32(1) of the bill be struck out and the following substituted:

"Regulations

"(1) The Lieutenant Governor in Council may make regulations,

"(a) prescribing anything that may be prescribed for the purposes of this part;

"(b) respecting the content or terms and conditions of any accountability agreement;

"(c) prescribing manners in which accomplishment may be recognized in orders under section 25."

The Acting Chair: Discussion on this government motion?

All in favour of the government motion? Opposed? It's carried.

Ms Witmer, your motion?

Mrs Witmer: Thank you, Mr Leal. I move that section 32 of the bill be amended by adding the following subsection:

"Referral to Legislative Assembly

"(4) Every regulation made under this section shall be referred to the Legislative Assembly and reviewed by a committee of the Legislative Assembly."

I guess we've heard throughout the course of the day that there's a tremendous amount of uncertainty and clarity regarding this bill and what it may and may not do. For example, we got into discussion about the $385 million that's to flow to hospitals. We don't know if the intention is that that would be, I guess, captured within this bill before the money would flow. Certainly we've had ministry staff up here who haven't been quite sure what may or may not be in the regulation.

I think we want to make sure that the committee and the stakeholders have the opportunity to review the regulations, and before these regulations would become law—some of which we know already are going to be very heavy-handed and very draconian—that at least there would be an opportunity for some transparency and public.

The Acting Chair: Further discussion on Ms Witmer's motion?

Ms Smith: The government, in its amendment on page 71, will be introducing public consultation before making regulations, which I believe will address Ms Witmer's concerns.

Mrs Witmer: I've seen the government motion, the new motion, and it does not allow for the regulations to be reviewed by a committee of the Legislative Assembly. It only would go to cabinet. So there's a significant difference.

Ms Martel: That is the point I wish to make. I think the distinction between a regulation that's dealt with at cabinet every Wednesday and a legislative process with a legislative committee that is public and that is in Hansard should be clear on the record. There's a huge difference, and we need to acknowledge that.

The Acting Chair: Any more discussion?

All those in favour of Ms Witmer's motion? Opposed? It's defeated.

Section 32, as amended: All in favour? Opposed? It's carried.

Section 32.1.

Ms Wynne: I move that the bill be amended by adding the following section:

"Public consultation before making regulations

"32.1(1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 32 unless,

"(a) the minister has published a notice of the proposed regulation in the Ontario Gazette and given notice of the proposed regulation by all other means that the minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;

"(b) the notice complies with the requirements of this section;

"(c) the time periods specified in the notice, during which persons may make comments, have expired;

"(d) the minister has considered whatever comments and submissions that members of the public have made on the proposed regulation, or an accurate synopsis of such comments; and

"(e) the minister has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the minister considers appropriate.

"Contents of notice

"(2) The notice mentioned in clause (1)(a) shall contain,

"(a) a description of the proposed regulation and the text of it;

"(b) a statement of the time period during which a person may submit written comments on the proposed regulation to the minister and the manner in which and the address to which the comments must be submitted;

"(c) a description of any other methods by which a person may comment on the proposed regulation and the manner in which and the time period during which they may do so;

"(d) a statement of where and when members of the public may review written information about the proposed regulation;

"(e) any prescribed information; and

"(f) any other information that the minister considers appropriate.

"Time period for comments

"(3) The time period mentioned in clauses (2)(b) and (c) shall be at least 60 days after the minister gives the notice mentioned in clause (l)(a) unless the minister shortens the time period in accordance with subsection (4).

"Shorter time period for comments

"(4) The minister may shorten the time period if, in the minister's opinion,

"(a) the urgency of the situation requires it;

"(b) the proposed regulation clarifies the intent or operation of this part or the regulations; or

"(c) the proposed regulation is of a minor or technical nature.

"Discretion to make regulations

"(5) Upon receiving the minister's report mentioned in clause (1)(e), the Lieutenant Governor in Council, without further notice under subsection (l), may make the proposed regulation with any changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the minister's report.

"No public consultation

"(6) The minister may decide that subsections (l) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 32 if, in the minister's opinion,

"(a) the urgency of the situation requires it;

"(b) the proposed regulation clarifies the intent or operation of this act or the regulations; or

"(c) the proposed regulation is of a minor or technical nature.

"Same

"(7) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 32,

"(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

"(b) the minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision.

"Contents of notice

"(8) The notice mentioned in clause (7)(b) shall include a statement of the minister's reasons for making the decision and all other information that the minister considers appropriate.

"Publication of notice

"(9) The minister shall publish the notice mentioned in clause (7)(b) in the Ontario Gazette and give the notice by all other means that the minister considers appropriate.

"Temporary regulation

"(l0) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 32 because the minister is of the opinion that the urgency of the situation requires it, the regulation shall,

"(a) be identified as a temporary regulation in the text of the regulation; and

"(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force.

"No review

"(11) No action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section shall be reviewed in any court."

The Acting Chair: Ms Wynne, just a point of clarification on page 71: Could you repeat for us clause 32.1(1)(e), please, just for the record.

Ms Wynne: Clause (1)(e): "the minister has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the minister considers appropriate."

The Acting Chair: Discussion on new section 32.1?

Ms Martel: The government moved a similar motion at the end of part I of this bill with a similar provision regarding no review, and it seems to me that the minister had confidence in the regulation-making process and the decisions made through that process that that section wouldn't be allowed. It gives the impression that they have something to hide or something to be concerned about with respect to the process itself, and I don't think subsection 11 should appear in the bill at all.

1640

Mrs Witmer: Given the motion that we just introduced and that was defeated by the government, I'm looking for the committee to have an opportunity to view the regulations. We believe that is the appropriate course of action and that the consultation that is being proposed here simply doesn't go far enough. The public really doesn't have the opportunity to make sure the input they are giving is heard and considered in the rewrite of any regulations.

The Acting Chair: Any further discussion? Shall the government motion carry?

All in favour? Opposed? It's carried.

Section 33.

Ms Smith: I move that subsection 15(3) of the Health Insurance Act, as set out in section 33 of the bill, be struck out.

The Acting Chair: Discussion?

All in favour? Opposed? It's carried.

Continue, Ms Smith.

Ms Smith: I move that subsection 15.1(4) of the Health Insurance Act, as set out in section 33 of the bill, be struck out.

The Acting Chair: Discussion?

All in favour? Opposed? It's carried.

Ms Smith, please.

Ms Smith: I move that subsection 15.1(6) of the Health Insurance Act, as set out in section 33 of the bill, be struck out and the following substituted:

"Interpretation

"(6) In this section,

"'designated practitioner,' 'non-designated practitioner' and 'practitioner' have the same meanings as in part II of the Commitment to the Future of Medicare Act, 2004."

The Acting Chair: Discussion on that item?

All in favour? Opposed? It's carried.

Shall section 33, as amended, carry?

All in favour? Opposed? It's carried.

I'll return the chair to Mr Flynn. I want to thank members of the committee for their co-operation during my time in the chair.

The Chair: Section 34: Any comments?

Seeing none, all those in favour? Opposed? Carried.

Sections 35 through 39, there are no amendments. With the committee's concurrence, we could collapse those, unless there's anything that needs to be separated and spoken to.

Sections 35 through 39, collapsed: All those in favour? Opposed? Those motions are carried.

Moving on to section 40, we've got a government motion, page 75.

Ms Smith: I move that subsection 45(2.1) of the Health Insurance Act, as set out in subsection 40(3) of the bill, be struck out and the following substituted:

"Ministerial order

"(2.1) Upon the advice of the general manager, and where the minister considers it to be in the public interest to do so, the minister may make an order amending a schedule of fees or benefits that has been adopted in a regulation in any manner the minister considers appropriate for the purposes of the regulation."

The Chair: Speaking to the motion, Mr O'Toole.

Mr O'Toole: Just for clarification, would this be amending such schedules as the OHIP fee schedule or other clinic fees that are prescribed in regulation? What does this actually mean? Is it just a general ability to change any payment? There are fees allocated for procedural things, right from surgical procedures under OHIP fees to clinical diagnostic fees. They are all based on schedules, everything. Is this just in the hospital setting, or is it right across the board? Because under the Health Insurance Act—

Ms Smith: Perhaps we could ask for some technical advice on this, please.

The Chair: Who might be best to address this?

Ms Smith: Ms Montrose.

Ms Montrose: The provision allows for amendments to any schedule of fees or benefits prescribed under the Health Insurance Act. So that would be something like the schedule of benefits for physician services, dental services, chiropractic services, any of the insured services under the—

Mr O'Toole: Under the Regulated Health Professions Act.

Ms Montrose: No. I'm sorry?

Mr O'Toole: Fee'd services under the Regulated Health Professions Act.

Ms Montrose: Actually, they are only to the fee schedules prescribed under the Health Insurance Act, and that's for a limited range of practitioners: physicians, dentists, chiropractors, optometrists.

Mr O'Toole: I read in the media recently that there are ongoing negotiations with Dr Larry Erlick and Minister Smitherman on the OHIP fee schedule. They'll come to some agreement, hopefully without disruption of service by doctors. I think you're trying to avoid that. But this sounds to me like you'll be able to go in and render some of those fee schedules extraneous or not binding. Is that possible?

Ms Montrose: Right now the Health Insurance Act permits regulations to be enacted amending any fee schedule under that act. What this provision does is essentially allow amendments to be made without the necessity of going through the regulation-making process; for example, so that a fee schedule can be amended in the case of an emergency.

Mr O'Toole: I appreciate the debate here, because in health we spend so much money that we should know more about it. The pool under OHIP is a general amount. Generally the amount may not change, but would one of the provisions here be able to delist a service so that the fund doesn't change, that they could increase the fee for a hearing test but decrease any fee for eye tests?

Ms Montrose: That authority currently exists by regulation. This authority differs only in that it allows the minister in particular situations to amend the schedule without the necessity of moving through the regulations process.

Mr O'Toole: Very good; pretty strong powers.

Ms Martel: Just on the same point, can you give us an example of a circumstance where that would be necessary?

Ms Montrose: Perhaps a good example is what happened during the SARS epidemic. Generally speaking, services provided by telephone are not insured, and a number of physicians were incapable of rendering services in person and instead were rendering them by telephone. There was a significant period of time when it was unclear whether or not they'd be compensated for those services, because it would require a regulation which, as you know, takes some time to enact. This would allow, for example, the minister relatively quickly to cover that type of service so that everyone knows the service is insured when it's being rendered.

Ms Martel: I appreciate the nature of it, because I can see that as an emergency. I guess my concern is the flip side. What's the limit on the definition of "emergency"?

Ms Montrose: I just pulled up that example.

Ms Martel: It was a very good one, but as I'm listening to you and hearing about the discretion—that's a good example, and I would agree with that. I wonder, has the ministry been thinking about what the limitation would be? Doing it without regulation is a pretty broad power. At least with a regulation you have to come to cabinet.

Ms Montrose: There are certain limitations set out in the section.

Ms Martel: Could you point them out to me? My apologies; I'm not trying to put you on the spot.

Ms Montrose: If you look at (2.1), it must be in the public interest that the amendment be made, it has to be upon the advice of the general manager of OHIP and the orders made are time-limited.

Ms Martel: Where is the reference to "time-limited"?

Ms Montrose: In (2.2), the 12-month outside limit.

Ms Martel: That's a reference back to the original bill. OK.

Ms Montrose: That's right, and there's another provision further on which indicates that you can't use the

section to re-enact the same thing. So at the end of the 12-month period you can't say, "We'll continue this for another 12 months."

Ms Martel: All right. Thanks.

The Chair: Any further speakers?

Seeing none, all those in favour of the motion on page 75? Those opposed? That motion is carried.

Moving on to the motion on page 76: Ms Smith.

1650

Ms Smith: I move that paragraph 2 of subsection 45(2.2) of the Health Insurance Act, as set out in subsection 40(3) of the bill, be amended by adding "or benefits" after "fees" wherever it occurs.

The Chair: Any speakers?

Seeing none, all those in favour? All those opposed? That motion is carried as well.

Moving on to page 77: Ms Smith.

Ms Smith: I move that subsection 45(2.4) of the Health Insurance Act, as set out in subsection 40(3) of the bill, be amended by adding "or benefits" after "fees".

The Chair: Any speakers to that motion?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 40, as amended, carry?

Those in favour? Those opposed? Section 40 is carried.

Section 41: there are no amendments. Shall section 41 carry?

Those in favour? Those opposed? That is carried.

Moving on to the government motion on page 78: Ms Smith.

Ms Smith: I move that section 42 of the bill be struck out and the following substituted:

"Commencement

"42(1) Subjection to subsection (2), this act comes into force on royal assent.

"Same

"(2) Sections 1 to 6, 7 to 32, and 33 to 41 come into force on a day to by named by proclamation of the Lieutenant Governor."

The Chair: Any speakers to that motion?

Seeing none, all those in favour? Those opposed? That motion is carried.

Shall section 42, as amended, carry? Those opposed? Section 42, as amended, is carried.

Section 43 has no amendments. Shall section 43 carry?

Those in favour? Those opposed? Section 43 is carried.

Moving now to the preamble: Ms Witmer, on page 79.

Mrs Witmer: We're back to the preamble of the bill, and so far, as my colleague has noted, we've not had one of our amendments, which do reflect what we heard in committee, accepted by the government. We hope that in the preamble they will seriously consider some of the suggestions we've made. They do reflect input we've heard from stakeholders. I think it's important that the preamble reflect what's in the bill.

I move that paragraph 5 of the preamble to the bill be struck out.

We make this motion based on the fact that this is the section that references:

"Recognize that pharmacare for catastrophic drug costs and home care based on assessed need are important to the future of the health system;

"Recognize that access to primary health care is a cornerstone of an effective health system."

However, there is nothing within this bill that deals specifically in any way with pharmacare, with home care or with primary care, so we just wonder why we would include this in there. We recognize that those are all important components of the health system, as I know the government does, but the body of the bill certainly does not reflect this statement in the preamble. We don't see the connection between the preamble and the body of the bill, and that's the reason for our recommendation.

The Chair: Any further speakers?

Seeing none, all those in favour? Those opposed? That motion is lost.

Moving on to the government motion on paragraph 7.

Ms Smith: I move that paragraph 7 of the preamble to the bill be amended by adding "that reflects the public interest and" after "in a way".

The Chair: Paragraph 7 starts with "Affirm" or "Therefore"?

Ms Smith: Paragraph 7 starts, "Believe in public accountability."

The Chair: OK. Is everybody clear on the change in wording? Any speakers?

All those in favour? Those opposed? That is carried.

Going back to Ms Witmer, page 81.

Mrs Witmer: I'm glad that the last amendment was made. It does speak to the public interest, which of course is very important.

I move that the preamble to the bill be amended by adding the following paragraph after paragraph 7:

"Believe that the government and health resource providers must work collectively to ensure that the health system provides quality and timely care to patients."

We have talked about the fact that this bill supposedly commits itself to accessibility, to accountability. This amendment, I think, recognizes the shared responsibility that the government and the health resource providers have in order to ensure that if you're going to have accessibility, have improved access, you are going to have to ensure that Ontarians receive quality and timely care. Obviously, both parties have to be committed to ensuring that there is quality and timely care to patients.

I hope the government will seriously consider adding this to the preamble, which I think speaks to the need for co-operation between the government and the health resource providers. In fact, I'm not sure how the government could say no to this, if this bill is all about the commitment to medicare.

Mr O'Toole: In trying to find some reasonable respect here in tone, if not in substance, this small amendment to the preamble would put clearly before

people the commitment to timely and quality care. More importantly, it would at least indicate in some trivial way that you had listened to the opposition's voice in the debate.

If you're not going to adopt one single piece of advice from the former Minister of Health, Mrs Witmer, I think it's disrespectful. Maybe you're being whipped into voting every one of our amendments down. I understand that. But it might be just a token of respect. I think I'll deliberate as I watch the vote take place here.

The Chair: Any further speakers?

Seeing none, all those in favour? Those opposed? That motion loses.

Page 82: Ms Witmer.

Mrs Witmer: I move that the preamble to the bill be amended by adding the following paragraph after paragraph 7:

"Support negotiated accountability agreements between the government and health resource providers that enhance the accountability of both the government and health resource providers."

This amendment to the preamble, I believe, is an attempt to do what the government says they're doing, and that is to recognize that accountability is a shared responsibility and that it extends to everyone within the health system, whether it's the government or the health resource providers.

Also, we've talked about negotiated agreements. The government boldly proclaims today in its release that "accountability agreements will be negotiated between boards and the minister." If that is indeed your claim, I think then you would be in a position where you would want to support this because this will ensure that the role of the hospital board is not undermined. It's not going to have a negative impact on those who volunteer to serve on boards. If negotiated agreements are indeed the cornerstone of accountability in Bill 8, then no agreement can be valid unless it is entered into freely. I think it is very important to at least set out in the preamble that the objective is to reach negotiated settlements.

1700

The Chair: Further speakers?

Mr O'Toole: Out of respect for Mrs Witmer's work and consideration for a fair-minded approach here, I would ask for a recorded vote when this question is put.

The Chair: I'm afraid you can't ask for a recorded vote. Your colleague may be able to, but you can't.

Mr O'Toole: I understand. I'm just suggesting it.

Mrs Witmer: We'll have a recorded vote.

The Chair: I had a feeling we would. It was a technicality. Are there any further speakers?

Ayes

Martel, Witmer.

Nays

Leal, Matthews, McNeely, Smith, Wynne

The Chair: That motion loses.

Mrs Witmer.

Mrs Witmer: I move that the preamble to the bill be amended by adding the following paragraph after paragraph 7:

"Recognize the importance of ensuring and rewarding good governance of health resource providers."

I think that's what this bill is intended to do. It recognizes that these individuals are partners in accountability with the government, and obviously the government wants to do everything it can to promote good governance of the provider organizations. That's the intent.

The Chair: Any further speakers?

All those in favour? Those opposed? The motion loses.

We are moving on to page 84: Mrs Witmer.

Mrs Witmer: Thank you very much, Mr Leal—Mr Flynn.

Mr Leal: I made a lasting impression.

Mrs Witmer: You sure did. This is the only and last opportunity that the government has to even acknowledge that the opposition has a role to play. So far you have voted against every motion we've introduced. I would just remind you these motions are not figments of our imagination. I can give you the names, the presentations, the pages and the lines on the pages from the deputations that were made to us here in committee. They do reflect the input of those who were sincerely interested in making this bill better. I hope you will support this last one. It is to the preamble.

I move that the preamble to the bill be amended by adding the following paragraph after paragraph 7:

"Recognize that the promotion of health and the prevention of disease includes both mental and physical illness."

This is really important. You know, we talk about physical illness all the time. We have this poor second cousin of mental illness. Regrettably, I think the government has an obligation to try to effect a change and raise the stature of mental illness. This change to the preamble, I hope, will reflect the changing attitude of this government. It will reflect a better understanding of mental illness.

When I was Minister of Health, one of the things that I started to do was reform the mental health system. We still have a long way to go, and I hope your government will continue. But I can tell you that the mental health providers who appeared before us have asked for this amendment. I believe it is absolutely critical, I believe it is absolutely essential, if we really want to demonstrate that we're listening to those who deal with mental illness, that we would recognize that mental health services are an explicit and integral part of the health care system. We need to acknowledge those people who work so hard in the area of mental health services. I would encourage you to add this to the preamble.

The Chair: Any further speakers?

Mrs Witmer: Recorded vote.

Ayes

Martel, Witmer.

Nays

Leal, Matthews, McNeely, Smith, Wynne.

The Chair: The motion is lost.

We'll move on to page 85: Ms Smith.

Ms Smith: I move that paragraph 8 of the preamble to the bill be struck out and the following substituted:

"Affirm that a strong health system depends on collaboration between the community, consumers, health service providers and governments, and a common vision of shared responsibility;"

The Chair: Speaking to the motion?

Ms Martel: I wonder if the government would consider a suggestion. The word "consumer" appears elsewhere in the preamble too; I really despise the use of the word "consumer" when it comes to health care. I think we're talking about patients. It would be great if we could just change "consumer" to "patient."

Ms Smith: Ms Martel, I've raised this question, because it was raised at the committee hearings, and the reason we can't use "patients" is because the accountability agreement provisions also apply to long-term-care facilities where the residents are involved and are not considered to be patients. We could change it to "individuals."

Ms Martel: I'd be happier with that. "Consumer" is like, "Pay for your health care." This is just giving me absolutely the wrong sense of where we should be heading.

The Chair: Did I hear some agreement there, Ms Martel, that you would—

Mr O'Toole: The staff is giving us direction. The ministry staff are going to tell them what to do.

Ms Smith: Thank you, Mr O'Toole, for that insight. Ms Martel, if you'd like to introduce a friendly amendment to include "individual" as opposed to "consumer," we're open to that.

Ms Martel: I wasn't going to introduce amendments today. I made a conscious decision not to. Since we can't go with "patients," which is my first preference—let me get that on the record—then I would move that the friendly amendment be, "Affirm that a strong health system depends on collaboration between the community, individuals, health service providers and governments, and a common vision of shared responsibility;"

The Chair: Just hang on one second.

Ms Martel: While we're talking about this, the other problem is that "consumer" appears above, in the paragraph that starts with "Believe in a consumer-centred health system." I don't like that either, but trying to put "individual" in there doesn't work. If we have two different words, that's fine with me. But if we could find an even better word in that regard, I would be happier.

The Chair: Let's deal with this one first. Unfortunately it needs to be in writing, and it will treated as an amendment to an amendment and can be dealt with quickly. We'd replace the word "consumers" with "individuals."

The amendment is that the word "consumers" will be replaced by the word "individuals." Speaking to that motion?

Apparently we need to get that photocopied.

Ms Smith: Can we move to the final motion on page 86 and come back to this, if we have unanimous consent?

The Chair: Agreed. We're going to move ahead to 86 and come back to 85 to deal with the amendment once it's been photocopied.

Mr O'Toole: Go ahead.

The Chair: Mrs Witmer, do you agree with changing the order of 85 and 86?

Mrs Witmer: That's fine.

1710

The Chair: We're just doing some photocopying for 85. So let's move ahead with 86.

Ms Smith: I move that the preamble to the bill be amended by adding the following paragraph after "high-quality health services to all Ontarians":

"Recognize the importance of an Ontario Health Quality Council that would report to the people of Ontario on the performance of their health system to support continuous quality improvement;"

The Chair: Anybody speaking to the motion?

Mr O'Toole: This may be late in the game, but is there any reference here to the role of the district health councils? Is there anything at all? The district health councils are supposed to be the planning arm for the ministry—non-partisan, whatever. But what is the health council going to be doing: working with them, for them? What are we doing here: creating another kind of governance model? That's regional health, that's what that is. This is a move toward regionalized health.

Mrs Witmer: That's it. That will be the next bill.

Mr O'Toole: It's clear. I can see it. It's coming. It's all a kind of chess game thing here.

The Chair: Are there any further speakers?

Ms Martel: I feel like I'm on a roll, so let me just get in my—you've heard this before and you're going to hear it again. I think this council should be able to make recommendations, so I would ask for a friendly amendment that would say, "would report to and make recommendations to the people of Ontario on the performance" etc.

The Chair: Actually, there is no such thing as a friendly amendment. We're inventing terms. It's either an amendment or it's not. Whether it's friendly or not is just really how you feel about it.

Ms Martel, if you are going to submit an amendment, it does need to be in writing.

Ms Martel: Just give me some word now. If it's going to be voted down, I won't even take the time. It's going to be voted down? OK, never mind. Forget it.

The Chair: Thank you.

We're still dealing with the motion on page 86. Are there any further speakers?

Seeing none, all those in favour? Those opposed? That motion is carried.

That's great timing. We've got photocopies of this major change. Ms Martel, this is your amendment. Would you like to read it into the record?

Ms Martel: I'll do the best I can, Chair.

I move that the amendment to paragraph 8 of the preamble to the bill moved by Ms Smith be amended by striking out "consumers" and substituting "individuals".

The Chair: Are there any speakers to that amendment?

Seeing none, all those in favour? That looks unanimous to me. We need to record that one.

Mr Duguid: Recorded vote.

Ayes

Duguid, Leal, Martel, Matthews, McNeely, Smith, Wynne.

Nays

Witmer.

The Chair: Now, if we can deal with the amendment on page 85, as amended: All those in favour? Those opposed? That motion is carried.

Shall the preamble, as amended, carry?

Those in favour? Those opposed? That is carried.

Should the long title carry?

Those in favour? Those opposed? That carries.

Shall Bill 8, as amended, carry? Any comments? Any debate? It's all been said?

All those in favour? Those opposed? That motion is carried.

Shall I report the bill, as amended, to the House?

Those in favour? Those opposed? It's carried. I shall report the bill.

That, ladies and gentlemen, I believe is the end of our proceedings.

Ms Smith: Mr Chair, I had promised clarification to the other side with respect to paragraph 26(3)3. In fact, what section 26 does provide is for the issuance of an order that would hold back, reduce or discontinue "any payment payable to or on behalf of a resource provider by the crown." So, in fact, there is a provision to hold back or reduce a payment, which would be similar to the funding agreements that are now in place that allow the minister to hold back in long-term-care facilities when there is a breach of a service agreement. Hopefully that clarifies the confusion around paragraph 26(3)3.

There is a 30-day notice provision, so that before such an order can be issued the non-compliance would be notified 30 days in advance and time to comply would be given. It's only in the case where there's a breach of an accountability agreement.

With respect to the $385 million that was announced last week, $50 million of that has been committed to nursing, and it is expected that the health service providers will make a commitment to provide that amount to nursing. The joint policy and planning committee, which is made up of the OHA and the ministry representatives, are working on future agreements which will be consistent with the accountability agreements that are set forward in Bill 8. I believe that addresses that concern or clarifies it.

Mrs Witmer: Thank you, Ms Smith. So in essence then, the money that has been committed, the total $385 million, I guess you're saying, will only flow to the hospitals once the accountability agreements that we're talking about in this bill have been signed?

Ms Smith: No. To clarify that, the health service providers will be required to sign a sign-back letter agreeing that they will enter into negotiations on an accountability agreement when this legislation is in place. Those sign-back letters are being drafted as we speak. It is expected that that money will flow much sooner than prior to this legislation being passed.

Mrs Witmer: What are they committing to, then?

Ms Smith: To entering into negotiations for future accountability agreements.

Mrs Witmer: So basically they're signing their lives away, because if after 60 days there's no agreement on the agreement, then the agreement can be imposed by the minister.

Ms Smith: Again, Ms Witmer, we will continue to agree to disagree on this point. There is a provision that allows for the negotiation of accountability agreements. They will be able to enter into those negotiations with the ministry.

I also just wanted to address the concern you raised a couple times about whether or not this bill was going to be brought back to committee. I understand that issue is before the House leaders and in negotiation with the House leaders, and we expect some advice on that in the near future.

Mrs Witmer: Mr Flynn, I guess I do believe it inappropriate that the government has made a funding commitment that really depends on the passage of this bill. I think it's been quite presumptuous of the minister to be making that type of commitment. I think he is more or less shrugging his shoulders at the role of government and assuming the bill is going to be passed. I think he's taking a lot for granted.

Ms Martel: I have two requests, Chair. I'm not sure that I heard the difference between performance agreements and accountability agreements. Could I get that? I wonder if the parliamentary assistant would mind ensuring that the response that was given could be put in writing for the committee members. I would appreciate that.

Ms Smith: I will undertake to provide it in writing.

Just as a point of clarification on your question: Performance agreements are between the CEOs, and the boards as outlined in the bill, and accountability

agreements are between the boards of health service providers and the ministry. That's the difference there.

With respect to Ms Witmer's comments, I would just note that the JPPC has been meeting for an extended period of time already on some form of agreement, whether we call them service agreements, performance agreements or accountability agreements. It is expected that those negotiations will roll into what will develop as accountability agreements under this legislation. So I don't believe the minister has been presumptuous in any way. In fact, there have been ongoing negotiations to come up with these types of agreements, however we call them, moving forward.

Mrs Witmer: That having been said, I think it would have been courteous of the ministry to have informed the JPPC, because I know they wondered what had happened to the negotiations that they were part of. Nobody has explained to them—I guess now we have an explanation and so now all of the stakeholders know where we're going. I would hope in future that we wouldn't have to raise this type of issue here and the stakeholders would have been informed as to what was going on and how those negotiations and discussions were going to be rolled into what's intended within this bill.

The Chair: Thank you very much. For many of us, this was our first time around, and for the more experienced people, thank you for your assistance. Thank you for your attention and your civility. We are adjourned.

The committee adjourned at 1722.

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Mr Jim Brownell (Stormont-Dundas-Charlottenburgh L)
Mr Kim Craitor (Niagara Falls L)
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Ms Deborah Matthews (London North Centre / London-Centre-Nord L)
Mr Phil McNeely (Ottawa-Orléans L)
Ms Monique Smith (Nipissing L)
Mrs Elizabeth Witmer (Kitchener-Waterloo PC)

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