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**Official Report  
of Debates  
(Hansard)**

**Wednesday 28 April 2004**

**Journal  
des débats  
(Hansard)**

**Mercredi 28 avril 2004**

**Standing committee on  
general government**

Health Information  
Protection Act, 2004

**Comité permanent des  
affaires gouvernementales**

Loi de 2004 sur la protection  
des renseignements sur la santé

Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
Greffière : Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Wednesday 28 April 2004

Mercredi 28 avril 2004

*The committee met at 1553 in room 151.*

**COMMITTEE BUSINESS**

**The Chair (Mr Jean-Marc Lalonde):** I will call this meeting to order.

The first item we have on the agenda is a motion to amend membership on the subcommittee on committee business.

**Mr Ernie Parsons (Prince Edward-Hastings):** I move that the membership of the subcommittee on committee business be revised as follows: that Mr Renaldi be appointed in the place of Mr Leal.

**The Chair:** In favour? No objection. Carried.

I'd just like to point out that we have three new members on this committee, which was announced yesterday. Mr Wayne Arthurs, Bob Delaney and Deb Matthews have been called to replace members of our committee. Welcome to all those new members.

**SUBCOMMITTEE REPORT**

**The Chair:** Now we will proceed with all the amendments that have been—sorry, item number 2: Report of the subcommittee on committee business. Mr Delaney.

**Mr Bob Delaney (Mississauga West):** Thank you, Mr Chair. I'd like to read the report of the subcommittee.

"Your subcommittee met on Wednesday, April 21, 2004 to consider the method of proceeding on Bill 31, An Act to enact and amend various Acts with respect to the protection of health information, and recommends the following:

"1. That the committee meet for the purpose of clause-by-clause consideration of Bill 31 during its regularly scheduled meeting times on Wednesday, April 28, 2004, Monday, May 3, 2004, Wednesday, May 5, 2004 and Monday, May 10, 2004.

"2. That amendments to Bill 31 be received by the clerk of the committee by 5 pm on Monday, April 26, 2004.

"3. That an advertisement be placed on the OntParl channel and the Legislative Assembly Web site.

"4. That the Chair of the committee send a letter to the Minister of Health and Long-Term Care requesting that ministry staff be in attendance during clause-by-clause consideration to answer questions of the committee.

"5. That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings."

**The Chair:** Any questions or comments? None. Everyone is in favour? Carried.

Now, before we go any further, I'd like to thank the ministry staff for all the support and the research they have done to facilitate our task in the amendments. Thank you very much for all the work you have done. I know you contacted quite a few groups and stakeholders, and this will help us in our deliberation.

Also, I think everyone has received a copy of a letter that was just delivered by hand to me about half an hour ago from the Toronto Police Service. I hope you people will have a chance to read it.

**HEALTH INFORMATION  
PROTECTION ACT, 2004**

**LOI DE 2004 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ**

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

**The Chair:** The third item is clause-by-clause consideration. I have to say that every member has the right to know what they are voting for, so for this reason I would ask that every amendment has to be read. We know that we have only two hours left of today's time. I would ask Kathleen Wynne if she could proceed in the reading of those amendments. The reason I have chosen Kathleen is we have seen in the past that she is pretty good at it. She's a fast reader and articulates very well.

**Ms Kathleen O. Wynne (Don Valley West):** I'd be happy to do that, Mr Chair. I believe Mr Fonseca, the parliamentary assistant, has a statement that he was going to make.

**The Chair:** Yes, please.

**Mr Peter Fonseca (Mississauga East):** Good afternoon, everyone. I want to thank everybody for your tireless work on this bill and to welcome the new committee members.

It's my pleasure to be here with you today to tell you about our government's commitment to the proposed Health Information Protection Act. As you know, the McGuinty government came to office with a commitment to improve Ontario's health care system. That commitment was based on our belief that public health care is the best health care.

We're determined to protect our universal, publicly funded health care system. And we're determined not only to make it more responsive to people's needs but also to build their confidence in our health system.

We're determined to make health care work for Ontarians by making it more accountable and transparent to the people paying for it.

The committee's process around Bill 31, the Health Information Protection Act—to protect the privacy of the personal health information of each and every Ontarian while ensuring that the information is used carefully and appropriately to improve health care—has been a very rewarding one for all of us.

Ontarians believe the privacy of our health information is vitally important. So do we.

We've listened to those concerns and we're making government work for the people of Ontario by introducing an act that would guarantee that Ontarians would know how and when their health information would be used and disclosed. The ministry reviewed in depth all 93 submissions received, reviewed in depth the presentations at standing committee hearings as outlined in Hansard, and reviewed all letters sent to us by stakeholders subsequent to first and second reading.

The principal concern of the draft Health Information Protection Act is to ensure personal health information is protected when it is being collected, used and shared. If enacted, this legislation will put strong, clear rules in place for consistent protection of personal health information for every Ontarian.

We have endeavoured to the best of our ability to ensure that the legislation did not impede the ability of stakeholders to continue to carry out their functions. It would result in an environment where doctors and other health professionals can continue to deliver high-quality health care while protecting their patient's rights.

Doctors, hospitals, home care providers and other health care stakeholders have been asking for comprehensive health information legislation in Ontario for many years. And we've been working closely with them in developing this legislation.

If this legislation is enacted, the personal health information of all Ontarians will be protected to the greatest possible extent, and health services will be improved to best serve the people of this province. Thank you.

1600

**The Chair:** Thank you, Mr Fonseca. Any comments? No. It was agreed that we stand down 1 to 4, Bill 31. We start clause-by-clause with schedule A, section 1. Ms Wynne?

**Ms Wynne:** I move that the definition of "agent" in section 2 of schedule A to the bill be struck out and the following substituted—

*Interjection.*

**The Chair:** Sorry. We have to vote on every one of them. Shall section 1 carry? Carried. No amendment.

**Ms Wynne:** I move that the definition of "agent" in section 2 of schedule A to the bill be struck out and the following substituted:

"'agent', in relation to a health information custodian, means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent's own purposes, whether or not the agent has the authority to bind the custodian, whether or not the agent is employed by the custodian and whether or not the agent is being remunerated; ('mandataire')"

**The Chair:** Shall section 2, definition of "agent," carry? Carried. Shall the amendment carry? Carried.

Section 2, page 2.

**Ms Wynne:** I move that the definition of "inspector" in section 2 of schedule A to the bill be struck out.

**The Chair:** Shall section 2, definition of "inspector," carry, as amended? Carried.

Section 2, definition of "spouse."

**Ms Wynne:** I move that the definition of "spouse" in section 2 of schedule A to the bill be struck out and the following substituted:

"'spouse' means either of two persons who,

"(a) are married to each other, or

"(b) live together in a conjugal relationship outside marriage and,

"(i) have cohabited for at least one year,

"(ii) are together the parents of a child, or

"(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act,

"unless they are living separate and apart as a result of a breakdown of their relationship; ('conjoint')"

**The Chair:** Shall the amendment of section 2, definition of "spouse," carry? Carried.

Shall section 2 of schedule A be carried, as amended? Carried.

Now, subsection 3(1).

**Ms Wynne:** I move that the definition of "health information custodian" in subsection 3(1) of schedule A to the bill be amended by adding "or organization's" after "person's" in the portion before paragraph 1.

**The Chair:** Shall the section carry, as amended? Carried.

Subsection 3(1), paragraph 2.1.

**Ms Wynne:** I move that the definition of "health information custodian" in subsection 3(1) of schedule A to the bill be amended by adding "or organization's" after "person's" in the portion before paragraph 1.

**The Chair:** Shall subsection 3(1) carry, as amended? Shall the amendment carry? I'll get it—

**Ms Wynne:** I think I might have just read the same one. I'm sorry.

**Interjection:** What page are we on?

**The Chair:** Page 4.

**Ms Wynne:** We're on 5 now. Subsection 3(1), paragraph 2.1. Yes.

I move that the definition of "health information custodian" in subsection 3(1) of schedule A to the bill be amended by adding the following paragraph:

"2.1 A community care access corporation within the meaning of the Community Care Access Corporations Act, 2001."

**The Chair:** Shall the amendment carry? Carried.

Next one: page 6.

**Ms Wynne:** I move that section 3 of schedule A to the bill be amended by adding the following subsection:

"Interpretation, officer in charge

"(1.1) For the purposes of subparagraph 3 i of the definition of 'health information custodian' in subsection (1), the officer in charge of an institution within the meaning of the Mental Hospitals Act shall be deemed to be the person who operates the institution."

**The Chair:** Shall the amendment carry? Carried.

Page 7.

**Ms Wynne:** I move that paragraphs 1 and 2 of subsection 3(2) of schedule A to the bill be struck out and the following substituted:

"1. A person described in paragraph 1, 2 or 4 of the definition of 'health information custodian' in subsection (1) who is an agent of a health information custodian.

"2. A person who is authorized to act for or on behalf of a person that is not a health information custodian, if the scope of duties of the authorized person does not include the provision of health care."

**The Chair:** Shall the amendment carry? Carried.

Page 8.

**Ms Wynne:** Mr Chair, I have a new page 8. Does everyone have the same? OK.

I move that subsections 3(5), (6) and (7) of schedule A to the bill be struck out and the following substituted:

"Single custodian

"(5) Despite subsection (4), the following persons shall be deemed to be a single health information custodian with respect to all the functions described in the applicable paragraph, if any:

"1. A person who operates a hospital within the meaning of the Public Hospitals Act and any of the facilities, programs or services described in paragraph 3 of the definition of 'health information custodian' in subsection (1).

"2. A community care access corporation that provides a community service within the meaning of subsection 2(3) of the Long-Term Care Act, 1994 and acts as a placement coordinator as described in subsection 9.6(2) of the Charitable Institutions Act, subsection 18(2) of the Homes for the Aged and Rest Homes Act or subsection 20.1(2) of the Nursing Homes Act.

"3. Health information custodians or facilities that are prescribed.

"Application to act as one custodian

"(6) A health information custodian that operates more than one facility described in one of the subparagraphs of paragraph 3 of the definition of 'health information

custodian' in subsection (1) or two or more health information custodians may apply to the minister, in a form approved by the minister, for an order described in subsection (8)."

**The Chair:** Any discussion or questions?

**Mr Jerry J. Ouellette (Oshawa):** First of all, the new amendments: When were they received? Because through this process we agreed to a time that was voted on by the subcommittee, and then we would go to our stakeholders. I see there are 10 new amendments listed here. Were they received within the guidelines, and why didn't we receive them before?

**The Chair:** They all came in by the 25th at 5 o'clock.

**Mr Ouellette:** No, the new ones were not received. It wasn't until we arrived here.

**Clerk of the Committee (Ms Tonia Grannum):** But because we're not time allocated, we can still introduce amendments throughout the clause-by-clause process.

**Mr Ouellette:** But the subcommittee agreed to the process. By 5 o'clock yesterday, they had to be—

**Clerk of the Committee:** That's just to help facilitate the proceedings so that we're not sitting now, going through and trying to order all of the amendments. We had a deadline so that the bulk of the amendments came in. These were additional ones that the ministry had.

**Mr Ouellette:** Yes, but they didn't fall within the guidelines. That's why we have votes and timelines, so we can see them. See, the problem here is that we receive amendments and the standard process is to go to our constituents or the stakeholders involved with us to ensure there are no problems with them. Until I arrived here today, I did not receive these or see these. They may have come through at a later time, but being in the House and the other constituency things that are going on, it's difficult to see them. So now we're asked to come here.

Maybe, quite possibly, can we have the staff explain the difference between the two—the original one that was agreed to? Because, quite frankly, we went to our stakeholders and didn't have a lot of problems and it's a little bit of a surprise to see new ones arrive when we're sitting here to vote on them.

**The Chair:** Certainly. Can I have—

**Ms Wynne:** Mr Chair, I just wanted to note that the change between the original motion 8 and the new motion 8 is actually a grammatical change. It was actually a singular becoming a plural. In paragraph 3, "custodian" became "custodians." So it's a very, very minor grammatical change.

**Mr Ouellette:** Yes, but through this process we'll have to address them because we didn't have a chance to review them until we got here and then saw them sitting on our desk. And I don't have a problem with that one.

1610

**The Chair:** I appreciate your comment, too.

Shall the amendment carry, as read? Carried.

**Ms Wynne:** Subsection 3(8).

**The Chair:** Page 9.

**Ms Wynne:** I move that subsection 3(8) of schedule A to the bill be struck out and the following substituted:

“Minister’s order

“(8) Upon receiving an application described in subsection (6), the minister may make an order permitting all or some of the applicants to act as a single health information custodian on behalf of those facilities, powers, duties or work that the minister specifies, subject to the terms that the minister considers appropriate and specifies in the order, if the minister is of the opinion that it is appropriate to make the order in the circumstances, having regard to,

“(a) the public interest;

“(b) the ability of the applicants to provide individuals with reasonable access to their personal health information;

“(c) the ability of the applicants to comply with the requirements of this act; and

“(d) whether permitting the applicants to act as a single health information custodian is necessary to enable them to effectively provide integrated health care.

“Scope of order

“(8.1) In an order made under subsection (8), the minister may order that any class of health information custodians that the minister considers to be situated similarly to the applicants is permitted to act as a single health information custodian, subject to the terms that the minister considers appropriate and specifies in the order, if the minister is of the opinion that it is appropriate to so order, having regard to,

“(a) the public interest;

“(b) the ability of the custodians that are subject to the order made under this subsection to provide individuals with reasonable access to their personal health information;

“(c) the ability of the custodians that are subject to the order made under this subsection to comply with the requirements of this act; and

“(d) whether permitting the custodians that are subject to the order made under this subsection to act as a single health information custodian is necessary to enable them to effectively provide integrated health care.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 3 of schedule A carry, as amended? Carried.

Page 10.

**Ms Wynne:** I move that clause (a) of the definition of “personal health information” in subsection 4(1) of schedule A to the bill be amended by striking out “medical” and substituting “health”.

**The Chair:** Shall the amendment carry? Carried.

Page 11.

**Ms Wynne:** I move that subsection 6(1) of schedule A to the bill be amended by striking out “both persons” and substituting “the custodian”.

**The Chair:** Questions or comments? Shall the amendment carry? Sorry, we’ve gone too far.

**Ms Wynne:** We have to do section 5.

**The Chair:** We’re back to section 4.

Shall section 4, as amended, carry? Carried.

Shall section 5, as amended, carry? Carried.

**Ms Wynne:** Now we’re doing subsection 6?

**The Chair:** We’ll get there. Page 11.

**Ms Wynne:** I move that subsection 6(1) of schedule A to the bill be amended by striking out “both persons” and substituting “the custodian”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 6 of schedule A carry, as amended? Carried.

Shall section 7 of schedule A carry? Carried.

Now, page 12.

**Ms Wynne:** I move that subsections 8(2) and (2.1) of schedule A to the bill be struck out and the following substituted:

“Exceptions

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

“Same

“(2.1) A record of personal health information prepared by or in the custody or control of an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act shall be deemed to be a record to which clause 32(b) of the Freedom of Information and Protection of Privacy Act or clause 25(1)(b) of the Municipal Freedom of Information and Protection of Privacy Act applies, as the case may be.”

**The Chair:** Questions or comments?

Shall the amendment carry? Carried.

Shall section 8 of schedule A, as amended, carry? Carried.

Shall section 9 of schedule A carry? Carried.

Page 13, section 10.

**Ms Wynne:** I move that section 10 of schedule A to the bill be amended by adding the following subsection:

“Providers to custodians

“(4) A person who provides goods or services for the purpose of enabling a health information custodian to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with the prescribed requirements, if any.”

**The Chair:** Questions or comments?

Shall the amendment carry? Carried.

Shall section 10 of schedule A, as amended, carry? Carried.

Page 14.

**Ms Wynne:** Is there a section 11?

**The Chair:** Sorry. We’ve got one before that.

Shall section 11 of schedule A carry? Carried.

Page 14.

**Ms Wynne:** I move that subsection 12(2) of schedule A to the bill be amended by adding “Subject to subsection (3) and subject to the exceptions and additional requirements, if any, that are prescribed” at the beginning.

**The Chair:** Questions or comments?

Shall the amendment carry? Carried.

Page 15.

**Ms Wynne:** I move that section 12 of schedule A to the bill be amended by adding the following subsection:

“Exception

“(3) If the health information custodian is a researcher who has received the personal health information from another health information custodian under subsection 43(1), the researcher shall not notify the individual that the information is stolen, lost or accessed by unauthorized persons unless the health information custodian under that subsection first obtains the individual’s consent to having the researcher contact the individual and informs the researcher that the individual has given the consent.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 12 of schedule A, as amended, carry? Carried.

Shall section 13 of schedule A carry? Carried.

Page 16.

**Ms Wynne:** I move that subsections 14(2) and (3) of schedule A to the bill be struck out and the following substituted:

“(2) A health care practitioner may keep a record of personal health information about an individual in a place other than the individual’s home and other than a place in the control of the practitioner if,

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

“(b) the individual consents;

“(c) the health care practitioner is permitted to keep the record in the place in accordance with a regulation, bylaw or published guideline under the Regulated Health Professions Act, 1991, an act referred to in schedule 1 to that act, the Drugless Practitioners Act or the Social Work and Social Service Work Act, 1998, if the health care practitioner is described in any of clauses (a) to (c) of the definition of ‘health care practitioner’ in section 2; and

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

**The Chair:** Shall the amendment carry? Carried.

Shall section 14 of schedule A, as amended, carry? Carried.

Shall section 15 of schedule A carry? Carried.

Shall section 16 of schedule A carry? Carried.

Page 17.

**Ms Wynne:** I move that subsection 17(2) of schedule A to the bill be amended by striking out “or under a”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 17 of schedule A, as amended, carry? Carried.

Page 18.

**Ms Wynne:** I move that subsection 18(3.1) of schedule A to the bill be amended by striking out “or” at the end of clause (a) and by adding the following clause:

“(a.1) a disclosure pursuant to clause 31(1)(b); or”

**The Chair:** Shall the amendment carry? Carried.

Page 19.

1620

**Ms Wynne:** I move that the English version of clause 18(4)(b) of schedule A to the bill be struck out and the following substituted:

“(b) that the individual may give or withhold consent.”

**The Chair:** Shall the amendment carry? Carried.

Page 20.

**Ms Wynne:** I move that subsection 18(5) of schedule A to the bill be amended by adding “or makes readily available” after “posts”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 18 of schedule A, as amended, carry? Carried.

Shall section 19 of schedule A carry? Carried.

Now we’re moving on to section 20, page 21.

**Ms Wynne:** I move that subsection 20(2) of schedule A to the bill be amended by adding “2.1” after “2”.

**The Chair:** Shall the amendment carry? Carried.

Page 22.

**Ms Wynne:** I move that subsection 20(3) of schedule A to the bill be amended by striking out “2 or” and substituting “2, 2.1 or”.

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I just have one that’s French.

**Mr Delaney:** Do you want me to read it?

**The Chair:** He could read it, yes.

**Mr Michael Wood:** I move that the French version of subsection 20(4)—

**The Chair:** Sorry. It has to be a member.

**Ms Wynne:** Mr Delaney’s going to read this one.

**Mr Delaney:** I move that the French version of subsection 20(4) of schedule A to the bill be amended by striking out “que le particulier a consenti implicitement à ce que son nom et l’endroit où il se trouve dans l’établissement soient fournis à un représentant de l’organisation religieuse ou de l’autre organisation, sauf si le dépositaire sait que le particulier a expressément refusé ou retiré son consentement” and substituting “qu’il a le consentement implicite du particulier pour que son nom et l’endroit où il se trouve dans l’établissement soient fournis à un représentant de l’organisation religieuse ou de l’autre organisation, à condition que le dépositaire lui ait donné l’occasion de refuser ou de retirer son consentement et que le particulier ne l’ait pas fait”.

**Le Président:** Merci. Très bien dit. Très bien lu.

Shall the amendment carry? Carried.

Shall section 20 of schedule A, as amended, carry? Carried.

Section 21, page 24.

**Ms Wynne:** I move that clauses 21(1)(a) and (b) of schedule A to the bill be struck out and the following substituted:

“(a) to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and

“(b) to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 21 of schedule A, as amended, carry? Carried.

Page 25, section 22.

**Ms Wynne:** I move that the English version of subsection 22(0.1) of schedule A to the bill be amended by striking out “with any requirements” and substituting “with the requirements”.

**The Chair:** Shall the amendment carry? Carried.

Page 26.

**Ms Wynne:** I move that subsection 22(1) of schedule A to the bill be amended by adding at the end “including the information, if any, that is prescribed”.

**The Chair:** Shall the amendment carry? Carried.

Page 27.

**Ms Wynne:** I move that subsection 22(3) of schedule A to the bill be struck out and the following substituted:

“Parties

“(3) The parties to the application are:

“1. The individual applying for the review of the determination.

“2. The health information custodian that has custody or control of the personal health information.

“3. All other persons whom the board specifies.

“Powers of board

“(4) The board may confirm the determination of incapacity or may determine that the individual is capable of consenting to the collection, use or disclosure of personal health information.

“Restriction on repeated applications

“(5) If a determination that an individual is incapable with respect to consenting to the collection, use or disclosure of personal health information is confirmed on the final disposition of an application under this section, the individual shall not make a new application under this section for a determination with respect to the same or a similar issue within six months after the final disposition of the earlier application, unless the board gives leave in advance.

“Grounds for leave

“(6) The board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the individual’s capacity.

“Procedure

“(7) Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section.”

**The Chair:** Any questions or comments? If none, shall the amendment carry? Carried.

Shall section 22 of schedule A, as amended, carry? Carried.

Section 23, page 28.

**Ms Wynne:** I move that paragraph 1 of subsection 23(1) of schedule A to the bill be struck out and the following substituted:

“1. If the individual is capable of consenting to the collection, use or disclosure of the information,

“i. the individual, or

“ii. if the individual is at least 16 years of age, any person who is capable of consenting, whom the individual has authorized in writing to act on his or her behalf and who, if a natural person, is at least 16 years of age.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 23 of schedule A, as amended, carry? Carried.

We move on to section 23.1, page 29.

**Ms Wynne:** I move that schedule A to the bill be amended by adding the following section:

“Factors to consider for consent

“23.1(1) A person who consents under this act or any other act on behalf of or in the place of an individual to a collection, use or disclosure of personal health information by a health information custodian, who withholds or withdraws such a consent or who provides an express instruction under clause 36(1)(a), 37(1)(a) or 48(1)(d) shall take into consideration,

“(a) the wishes, values and beliefs that,

“(i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual’s personal health information, or

“(ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual’s personal health information;

“(b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;

“(c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and

“(d) whether the collection, use or disclosure is necessary to satisfy any legal obligation.

“Determination of compliance

“(2) If a substitute decision-maker, on behalf of an incapable individual, gives, withholds or withdraws a consent to a collection, use or disclosure of personal health information about the individual by a health information custodian or provides an express instruction under clause 36(1)(a), 37(1)(a) or 48(1)(d) and if the custodian is of the opinion that the substitute decision-maker has not complied with subsection (1), the custodian may apply to the board for a determination as to whether the substitute decision-maker complied with that subsection.

“Parties

“(3) The parties to the application are:

“1. The health information custodian.

“2. The incapable individual.

“3. The substitute decision-maker.



“4. Any other person whom the board specifies.

“Power of Board

“(4) In determining whether the substitute decision-maker complied with subsection (1), the board may substitute its opinion for that of the substitute decision-maker.

“Directions

“(5) If the board determines that the substitute decision-maker did not comply with subsection (1), it may give him or her directions and, in doing so, shall take into consideration the matters set out in clauses (1)(a) to (d).

“Time for compliance

“(6) The board shall specify the time within which the substitute decision-maker must comply with its directions.

“Deemed not authorized

“(7) If the substitute decision-maker does not comply with the board’s directions within the time specified by the board, he or she shall be deemed not to meet the requirements of subsection 25(2).

“Public guardian and trustee

“(8) If the substitute decision-maker who is given directions is the public guardian and trustee, he or she is required to comply with the directions and subsection (6) does not apply to him or her.

“Procedure

“(9) Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section.”

**The Chair:** Questions or comments? If not, shall the amendment carry? Carried.

Shall section 23.1 of schedule A, as amended, carry? Carried.

Section 24, page 30.

**1630**

**Ms Wynne:** I move that section 24 of schedule A to the bill be struck out and the following substituted:

“Authority of substitute decision-maker

“24.(1) If this act permits or requires an individual to make a request, give an instruction or take a step and a substitute decision-maker is authorized to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual, the substitute decision-maker may make the request, give the instruction or take the step on behalf of the individual.

“Same

“(2) If a substitute decision-maker makes a request, gives an instruction or takes a step under subsection (1) on behalf of an individual, references in this act to the individual with respect to the request made, the instruction given or the step taken by the substitute decision-maker shall be read as references to the substitute decision-maker, and not of the individual.”

**The Chair:** Shall the amendment carry as read? Carried.

Shall section 24 of schedule A, as amended, carry? Carried.

Section 25: Shall section 25 of schedule A carry? Carried.

Page 31, section 26.

**Ms Wynne:** I move that section 26 of schedule A to the bill be struck out and the following substituted:

“Appointment of representative

“26.(1) An individual who is 16 years old or older and who is determined to be incapable of consenting to the collection, use or disclosure of personal health information may apply to the board for appointment of a representative to consent on the individual’s behalf to a collection, use or disclosure of the information by a health information custodian.

“Application by proposed representative

“(2) If an individual is incapable of consenting to the collection, use or disclosure of personal health information, another individual who is 16 years old or older may apply to the board to be appointed as a representative to consent on behalf of the incapable individual to a collection, use or disclosure of the information.

“Exception

“(3) Subsections (1) and (2) do not apply if the individual to whom the personal health information relates has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property, who has authority to give or refuse consent to the collection, use or disclosure.

“Parties

“(4) The parties to the application are:

“1. The individual to whom the personal health information relates.

“2. The proposed representative named in the application.

“3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 25(1).

“4. All other persons whom the board specifies.

“Appointment

“(5) In an appointment under this section, the board may authorize the representative to consent, on behalf of the individual to whom the personal health information relates, to,

“(a) a particular collection, use or disclosure at a particular time;

“(b) a collection, use or disclosure of the type specified by the board in circumstances specified by the board, if the individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information at the time the consent is sought; or

“(c) any collection, use or disclosure at any time, if the individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information at the time the consent is sought.

“Criteria for appointment

“(6) The board may make an appointment under this section if it is satisfied that the following requirements are met:

“1. The individual to whom the personal health information relates does not object to the appointment.

"2. The representative consents to the appointment, is at least 16 years old and is capable of consenting to the collection, use or disclosure of personal health information.

"3. The appointment is in the best interests of the individual to whom the personal health information relates.

"Powers of board

"(7) Unless the individual to whom the personal health information relates objects, the board may,

"(a) appoint as representative a different individual than the one named in the application;

"(b) limit the duration of the appointment;

"(c) impose any other condition on the appointment;

"(d) on any person's application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment.

"Termination

"(8) The board may, on any person's application, terminate an appointment made under this section if,

"(a) the individual to whom the personal health information relates or the representative requests the termination;

"(b) the representative is no longer capable of consenting to the collection, use or disclosure of personal health information;

"(c) the appointment is no longer in the best interests of the individual to whom the personal health information relates; or

"(d) the individual to whom the personal health information relates has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property, who has authority to give or refuse consent to the types of collections, uses and disclosures for which the appointment was made and in the circumstances to which the appointment applies.

"Procedure

"(9) Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section."

**The Chair:** Questions or comments? If none, shall the amendment carry as read? Carried.

Shall section 26 of schedule A, as amended, carry? Carried.

Shall section 27 of schedule A carry? Carried.

Shall section 28 of schedule A carry? Carried.

Page 32, section 29.

**Ms Wynne:** I move that subsection 29(3) of schedule A to the bill be struck out and the following substituted:

"Exception

"(3) This section does not apply to personal health information that a health information custodian is required by law to collect, use or disclose."

**The Chair:** Shall the amendment carry? Carried.

Shall section 29 of schedule A, as amended, carry? Carried.

Section 30, page 33.

**Ms Wynne:** I believe there's a change and I'm not sure whether I'm reading the November—yes, it's November 1, I believe.

**Clerk of the Committee:** So you're reading new 33?

**Ms Wynne:** Yes.

I move that section 30 of schedule A to the bill be amended by adding the following subsections:

"Express instruction to public hospitals etc.

"(2) An express instruction that an individual, before November 1, 2005, gives to a health information custodian that is a public hospital within the meaning of the Public Hospitals Act or a person described in paragraph 1 of subsection 3(5) with respect to the use or disclosure of personal health information about the individual is not an express instruction for the purpose of clause 36(1)(a), 37(1)(a) or 48(1)(d).

"Same

"(3) Nothing in subsection (2) prevents the custodian from refraining, in accordance with an express instruction that an individual gives as described in that subsection, to use or disclose the information under the clause 36(1)(a), 37(1)(a) or 48(1)(d).

"Repeal

"(4) Subsections (2) and (3) are repealed on November 1, 2005."

**The Chair:** Discussion, questions or comments?

**Mr Ouellette:** We've been scrambling to try and get this all straightened out. I know the ministry staff has been working very hard. I wonder if the ministry staff might be able to explain why the changes on those dates, just from the three pieces now that will be different.

**The Chair:** Can you introduce yourself, please, before we proceed?

**Mr Michael Orr:** My name is Michael Orr, legal services branch, Ministry of Health and Long-Term Care.

This provision relates to the express instructions which are to be given under certain of the subsections. Under sections 36, 37 and 48 there are provisions which allow uses and disclosures of personal health information to be made without the person's consent in certain circumstances, subject to the individual's ability to provide an express instruction to the contrary.

What we heard from the Ontario Hospital Association was that they would not be able to comply in many instances, given the need to adjust their information systems. They would not be able to comply with those provisions for one year after the legislation comes into force. This date is one year after the legislation comes into force if the remaining amendments that the government is proposing, I believe, are accepted.

**Mr Ouellette:** OK. So, from that, we have an understanding that the OHA and the OMA are in agreement with this change. Would the PA agree to that?

**The Chair:** Can you identify yourself first, please?

**Ms Carol Appathurai:** Carol Appathurai. I'm acting director of the health information privacy unit.

**Mr Ouellette:** I was asking the parliamentary assistant whether the OHA and OMA were in agreement with that.

**Mr Delaney:** Yes, they are.

**Ms Shelley Martel (Nickel Belt):** I have two concerns that we had raised with us by the community health centre in Sault Ste Marie. They also expressed serious concerns about how they would provide the technical changes to implement the lockbox provisions. They are an extremely large outfit; it's not a hospital, true. But the number of patients they see in there and the technology, we have a sense from them that they aren't going to be able to comply with this date as well.

**Ms Appathurai:** We have not heard from them subsequent to those discussions.

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**Ms Martel:** That's what we heard when we were there for the public hearings.

I just flagged that because they were the other group that had moved, quite substantially, to technological requirements and expressed concerns to us about that.

Secondly, and this may not be an issue at all but just to refresh my memory on this, the federal legislation is in effect. What provisions, if any, were the hospitals obliged to meet with respect to lockbox provisions, and this does impact on them at all? Were there any federal provisions, and I'm sorry I can't remember, that would have had visions similar to what we're moving forward with now, which may be affected because we've got such different dates than the federal law?

**Ms Appathurai:** There was no definitive statement made, but it appeared that the hospitals would not come under the federal legislation. They would not be bound by that.

**Ms Martel:** So whatever changes we make, it's not impacting on them one way or the other. OK.

**The Chair:** Are there any other questions or comments?

Shall the amendment carry, as read? Carried.

Shall section 30 of schedule A, as amended, carry? Carried.

Shall section 31 of schedule A carry? Carried.

Shall section 32 of schedule A carry? Carried.

Section 33, page 34.

**Ms Wynne:** I move that subsection 33(2) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 35.

**Ms Wynne:** I move that subsection 33(3) of schedule A to the bill be amended by adding "Despite subsection 47(1)" at the beginning.

**The Chair:** Shall the amendment carry?

**Interjection:** That's the new—

**Ms Wynne:** That's new 35.

**The Chair:** OK. What is the change, to make sure that all the members are aware? I didn't get your name.

**Ms Halyna Perun:** It's Halyna Perun. The difference between the motion in the package and the new motion is that instead of "subject to subsection 47(1)," the provision should read, "Despite subsection 47(1)." That is consistent with the provision and motion at page 38,

which also reads, "Despite subsection 47(1)." It was an oversight.

**The Chair:** Thank you for the clarification.

Shall the amendment carry now? Carried.

Page 36.

**Ms Wynne:** I move that clause 33(3)(c) of schedule A to the bill be amended by striking out "a health profession whose members" and substituting "health care practitioners who".

**The Chair:** Shall the amendment carry? Carried.

Page 37.

**Ms Wynne:** I move that clause 33(3)(d) of schedule A to the bill be struck out and the following substituted:

"(d) if the person is prescribed and is collecting or using the health number, as the case may be, for purposes related to health administration, health planning, health research or epidemiological studies."

**The Chair:** Shall the amendment carry? Carried.

Page 38.

**Ms Wynne:** I move that subsection 33(4) of schedule A to the bill be struck out and the following substituted:

"Disclosure

"(4) Despite subsection 47(1) and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian shall not disclose a health number except as required by law."

**The Chair:** Shall the amendment carry? Carried.

Page 39.

**Ms Wynne:** I move that section 33 of schedule A to the bill be amended by adding the following subsection:

"Exceptions

"(6) Subsections (2), (3) and (4) do not apply to,

"(a) a person who collects, uses or discloses a health number for the purposes of a proceeding;

"(b) a prescribed entity mentioned in subsection 43.1(1) that collects, uses or discloses the health number in the course of carrying out its functions under section 43.1; or

"(c) a health data institute that the minister approves under subsection 45(9) and that collects, uses or discloses the health number in the course of carrying out its functions under sections 45 and 46."

**The Chair:** Shall the amendment carry? Carried.

Shall section 33 of schedule A, as amended, carry? Carried.

Shall section 34 of schedule A carry? Carried.

Section 35, page 40.

**Ms Wynne:** I move that clause 35(1)(a) of schedule A to the bill be struck out and the following substituted:

"(a) the individual consents to the collection being made indirectly;"

**The Chair:** Shall the amendment carry? Carried.

Page 41.

**Ms Wynne:** I move that clause 35(1)(c) of schedule A to the bill be amended by striking out the portion before subclause (i) and substituting the following:

"(c) the custodian is an institution within the meaning of the Freedom of Information and Protection of Privacy

Act or the Municipal Freedom of Information and Protection of Privacy Act, or is acting as part of such an institution, and the custodian is collecting the information for a purpose related to,”

**The Chair:** Shall the amendment carry? Carried.

Page 42.

**Ms Wynne:** I move that subclause 35(1)(c)(ii) of schedule A to the bill be struck out and the following substituted:

“(ii) the conduct of a proceeding or a possible proceeding, or”

**The Chair:** Shall the amendment carry? Carried.

Page 43.

**Ms Wynne:** I move that subsection 35(1) of schedule A to the bill be amended by adding the following clauses:

“(c.1) the custodian collects the information from a person who is not a health information custodian for the purpose of carrying out research conducted in accordance with subsection 36(3) or research that a research ethics board has approved under section 43 or that meets the criteria set out in clauses 43(10)(a) to (c), except if the person is prohibited by law from disclosing the information to the custodian;

“(c.2) the custodian is a prescribed entity mentioned in subsection 43.1(1) and the custodian is collecting personal health information from a person who is not a health information custodian for the purpose of that subsection;”

**The Chair:** Shall the amendment carry? Carried.

**Mr Ouellette:** Mr Chair, you brought forward the Toronto Police Service’s letter on behalf of Chief Fantino. Would his requests that have been brought forward be addressed in that section or would it be under section 43, under the definition of “custodian”?

**Ms Perun:** The disclosures-without-consent part, which would start around section 37, and most likely around section 39.

**Mr Ouellette:** Were there any amendments coming forward, specifically not having a chance, as the Chair mentioned?

**Ms Perun:** No, there are no amendments with respect to that letter.

**The Chair:** Any other questions or comments?

**Mr Fonseca:** That will be a separate issue and legislation will be coming forward where that issue will be addressed by the Ministry of Health and Long-Term Care and the Ministry of Community Safety and Correctional Services.

**The Chair:** So that could be brought to our attention again when we come to sections 37 and 39.

Shall the amendment on page 43 carry? Carried.

Page 44.

**Ms Wynne:** I move that clauses 35(1)(d), (e) and (f) of schedule A to the bill be struck out and the following substituted:

“(d) the commissioner authorizes that the collection be made in a manner other than directly from the individual;

“(e) the custodian collects the information from a person who is permitted or required by law or by a treaty,

agreement or arrangement made under an act or an act of Canada to disclose it to the custodian; or

“(f) subject to the requirements and restrictions, if any, that are prescribed, the health information custodian is permitted or required by law or by a treaty, agreement or arrangement made under an act or an act of Canada to collect the information indirectly.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 35 of schedule A, as amended, carry? Carried.

Section 36, page 45.

**Ms Wynne:** I move that clause 36(1)(a) of schedule A to the bill be amended by striking out “35(b)” and substituting “35(1)(b).”

**The Chair:** Shall the amendment carry? Carried.

Page 46.

**Ms Wynne:** I move that clause 36 (1)(c) of schedule A to the bill be amended by adding “or any unauthorized receipt of services or benefits” after “fraud”.

**The Chair:** Shall the amendment carry? Carried.

Page 47.

**Ms Wynne:** I move that clause 36(1)(d) of schedule A to the bill be struck out and the following substituted:

“(d) for the purpose of risk management, error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian;”

**The Chair:** Shall the amendment carry? Carried.

Page 48.

**Ms Wynne:** I move that clause 36(1)(g) of schedule A to the bill be struck out and the following substituted:

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

1650

**The Chair:** Shall the amendment carry? Carried.

Page 49.

**Ms Wynne:** I move that clause 36(1)(j) of schedule A to the bill be struck out and the following substituted:

“(j) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an act or an act of Canada.”

**The Chair:** Shall the amendment carry? Carried.

Page 50.

**Ms Wynne:** I move that subsection 36(2) of schedule A to the bill be amended by adding “on behalf of the custodian” at the end.

**The Chair:** Shall the amendment carry? Carried.

Page 51.

**Ms Wynne:** I move that subsection 36(4) of schedule A to the bill be amended by adding “or that is acting as part of such an institution” after “Municipal Freedom of Information and Protection of Privacy Act”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 36 of schedule A, as amended, carry? Carried.

Page 52, section 37.

**Ms Wynne:** I move that clause 37(1)(a) of schedule A to the bill be amended by adding “2.1” after “2”.

**The Chair:** Shall the amendment carry? Carried.

Page 53.

**Ms Wynne:** I move that clause 37(1)(c) of schedule A to the bill be struck out and the following substituted:

“(c) for the purpose of contacting a relative, friend or potential substitute decision-maker of the individual, if the individual is injured, incapacitated or ill and unable to give consent personally.”

**The Chair:** Shall the amendment carry? Carried.

Page 54.

**Ms Wynne:** I move that subsection 37(3) of schedule A to the bill be struck out and the following substituted:

“Facility that provides health care

“(3) A health information custodian that is a facility that provides health care may disclose to a person the following personal health information relating to an individual who is a patient or a resident in the facility if the custodian offers the individual the option, at the first reasonable opportunity after admission to the facility, to object to such disclosures and if the individual does not do so:

“1. The fact that the individual is a patient or resident in the facility.

“2. The individual’s general health status described as critical, poor, fair, stable or satisfactory, or in similar terms.

“3. The location of the individual in the facility.”

**The Chair:** Questions or comments?

**Ms Martel:** I noted in the package that it responded to a number of concerns that were raised and that it had the support of the OHA. I’m assuming that some of those organizations also saw the change.

**Ms Appathurai:** Yes, they did.

**The Chair:** Any other questions or comments? If none, shall the amendment carry? Carried.

Page 55.

**Ms Wynne:** I move that subsection 37(4) of schedule A to the bill be amended by striking out “believed” in the portion before clause (a) and substituting “reasonably suspected”.

**The Chair:** Shall the amendment carry? Carried.

Page 56.

**Ms Wynne:** I move that clause 37(4)(b) of schedule A to the bill be struck out and the following substituted:

“(b) for the purpose of informing any person whom it is reasonable to inform in the circumstances of,

“(i) the fact that the individual is deceased or reasonably suspected to be deceased, and

“(ii) the circumstances of death, where appropriate; or”

**The Chair:** Shall the amendment carry? Carried.

Shall section 37 of schedule A, as amended, carry? Carried.

Now we’ll move on to section 38, page 57.

**Ms Wynne:** I’m reading from the new page 57.

I move that section 38 of schedule A to the bill be amended by adding the following subsection:

“Authorization to collect

“(4) A person who is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the person under clause (1)(c).”

**The Chair:** Can you clarify the change in that one?

**Ms Wynne:** I’m going to ask staff to make the clarification.

**Ms Perun:** The change is basically a drafting change. The change is that in the original package, subsection (4) provided that “a person who is not a health information custodian and who receives information is authorized to collect,” but in reality it’s before the person receives the information that they must be authorized to collect it. The idea is that the custodian may disclose information where the recipient can receive it, so they have to be authorized to collect it before they can receive it. That’s the difference. Therefore, the way it was rewritten is that in subsection 38(4), the new provision will just make it clear that they would be authorized to collect it if they were to get it.

**The Chair:** Any questions? If none, shall the amendment carry, as read? Carried.

Shall section 38 of schedule A, as amended, carry? Carried.

Shall section 39 of schedule A carry? Carried.

Section 40, page 58.

**Ms Wynne:** I move that clause 40(1)(a) of schedule A to the bill be struck out and the following substituted:

“(a) subject to the requirements and restrictions, if any, that are prescribed, for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;”

**The Chair:** Shall the amendment carry? Carried.

Shall section 40 of schedule A, as amended, carry? Carried.

Section 41, page 59.

**Ms Wynne:** I move that section 41 of schedule A to the bill be struck out and the following substituted:

“Disclosure to successor

“41.(1) A health information custodian may disclose personal health information about an individual to a potential successor of the custodian, for the purpose of allowing the potential successor to assess and evaluate the operations of the custodian, if the potential successor first enters into an agreement with the custodian to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation.

“Transfer to successor

“(2) A health information custodian may transfer records of personal health information about an individual to the custodian’s successor if the custodian makes

reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

“Transfer to archives

“(3) Subject to the agreement of the person who is to receive the transfer, a health information custodian may transfer records of personal health information about an individual to,

“(a) the Archives of Ontario; or

“(b) in the prescribed circumstances, a prescribed person whose functions include the collection and preservation of records of historical or archival importance, if the disclosure is made for the purpose of that function.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 41 of schedule A, as amended, carry? Carried.

Section 42, page 60.

**Ms Wynne:** I move that clause 42(1)(h) of schedule A to the bill be struck out and the following substituted:

“(h) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an act or an act of Canada.”

**The Chair:** Shall the amendment carry? Carried.

Section 42, page 61.

**Ms Wynne:** I move that subsection 42(2) of schedule A to the bill be amended by striking out “an act described in that clause or a regulation made under that act” and substituting “an act, an act of Canada or a regulation made under any of those acts”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 42 of schedule A, as amended, carry? Carried.

Section 43, page 62.

**Ms Wynne:** I move that clause 43(6)(c) of schedule A to the bill be struck out and the following substituted:

“(c) not publish the information in a form that could reasonably enable a person to ascertain the identity of the individual;

“(c.1) despite subsection 47(1), not disclose the information except as required by law and subject to the exceptions and additional requirements, if any, that are prescribed;”

**The Chair:** Shall the amendment carry? Carried.

Page 63.

**Ms Wynne:** I move that subsection 43(7) of schedule A to the bill be amended by adding “or that is acting as part of such an institution” after “Municipal Freedom of Information and Protection of Privacy Act”.

**The Chair:** Shall the amendment carry? Carried.

Page 64.

**Ms Wynne:** I move that subsection 43(8) of schedule A to the bill be amended by adding “or that is acting as part of such an institution” after “Municipal Freedom of Information and Protection of Privacy Act”.

**The Chair:** Shall the amendment carry? Carried.

Page 65.

**Ms Wynne:** I move that subsection 43(10) of schedule A to the bill be struck out and the following substituted:

“Research approved outside Ontario

“(10) Subject to subsection (11), a health information custodian may disclose personal health information to a researcher or may use the information to conduct research if,

“(a) the research involves the use of personal health information originating wholly or in part outside Ontario;

“(b) the research has received the prescribed approval from a body outside Ontario that has the function of approving research; and

“(c) the prescribed requirements are met.”

**The Chair:** Shall the amendment carry? Carried.

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

Section 43.1, page 66.

1700

**Ms Wynne:** I move that clause 43.1(2)(b) of schedule A to the bill be struck out and the following substituted:

“(b) prescribed information in circumstances that are prescribed.”

**The Chair:** Shall the amendment carry? Carried.

Page 67.

**Ms Wynne:** I move that subsection 43.1(3) of schedule A to the bill be struck out and the following substituted:

“Approval

“(3) A health information custodian may disclose personal health information to a prescribed entity under subsection (1) if,

“(a) the entity has in place practices and procedures to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information; and

“(b) the commissioner has approved the practices and procedures, if the custodian makes the disclosure on or after the first anniversary of the day this section comes into force.”

**The Chair:** Shall the amendment carry as read? Carried.

Page 68.

**Ms Wynne:** I move that subsection 43.1(4) of schedule A to the bill be amended by striking out “two years” and substituting “three years”.

**The Chair:** Questions or comments? Shall the amendment carry? Carried.

Page 69.

**Ms Wynne:** Just note that I’m reading from new page 69.

I move that subsection 43.1(5) of schedule A to the bill be struck out and the following substituted:

“Authorization to collect

“(5) An entity that is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the entity under subsection (1).

“Use and disclosure

“(6) Subject to the exceptions and additional requirements, if any, that are prescribed and despite subsection 47(1), an entity that receives personal health information under subsection (1) shall not use the information except for the purposes for which it received the information and shall not disclose the information except as required by law.”

**The Chair:** I believe we should have questions and comments on that or clarification from the staff.

**Ms Wynne:** Could we get clarification from staff on that?

**Ms Perun:** This new motion reflects the same issue that I raised on motion 57 with respect to new subsection 38(4). It just came up twice. Basically, if you are allowed to disclose it as a custodian, the prescribed entity is then permitted to receive it, but the actual receipt hasn't occurred as yet.

**The Chair:** Any other questions? If not, shall the amendment carry? Carried.

Shall section 43.1 of schedule A, as amended, carry? Carried.

Section 44. Shall section 44 of schedule A carry? Carried.

Section 45, page 70.

**Ms Wynne:** I move that the definition of “de-identify” in subsection 45(1) of schedule A to the bill be amended by striking out “there is a reasonable basis to believe” and substituting “it is reasonably foreseeable in the circumstances”.

**The Chair:** Shall the amendment carry? Carried.

Page 71.

**Ms Wynne:** I move that subsection 45(10) of schedule A to the bill be amended by striking out “two years” and substituting “three years”.

**The Chair:** Shall the amendment carry? Carried.

Page 72.

**Ms Wynne:** I move that subsection 45(14) of schedule A to the bill be struck out and the following substituted:

“Disclosure by the minister

“(14) The minister may disclose to the health data institute that receives personal health information under subsection (2) other personal health information for the purposes of the analysis and linking that the minister requires if the disclosure is included in the minister's proposal, as amended under subsection (8), if applicable.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 45 of schedule A, as amended, carry? Carried.

Section 46. Shall section 46 of schedule A carry? Carried.

Section 47, page 73.

**Ms Wynne:** I move that subsections 47(1) and (2) of schedule A to the bill be struck out and the following substituted:

“Restrictions on recipients

“47(1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health

information custodian and to whom a health information custodian discloses personal health information, shall not use or disclose the information for any purpose other than,

“(a) the purpose for which the custodian was authorized to disclose the information under this act; or

“(b) the purpose of carrying out a statutory or legal duty.

“Extent of use or disclosure

“(2) Subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian, and to whom a health information custodian discloses personal health information, shall not use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be, unless the use or disclosure is required by law.

“Employee or agent information

“(2.1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, if a health information custodian discloses information to another health information custodian and the information is identifying information of the type described in subsection 4(4) in the custody or under the control of the receiving custodian, the receiving custodian shall not,

“(a) use or disclose the information for any purpose other than,

“(i) the purpose for which the disclosing custodian was authorized to disclose the information under this act, or

“(ii) the purpose of carrying out a statutory or legal duty; or

“(b) use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be.

“Same

“(2.2) The restrictions set out in clauses (2.1)(a) and (b) apply to a health information custodian that receives the identifying information described in subsection (2.1) even if the custodian receives the information before the day that subsection comes into force.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 47 of schedule A, as amended, carry? Carried.

Section 48, page 74.

**Ms Wynne:** I move that subsection 48(1) of schedule A to the bill be amended by adding the following clause:

“(c.1) the following conditions are met:

“(i) the custodian is a prescribed entity mentioned in subsection 43.1(1) and is prescribed for the purpose of this clause,

“(ii) the disclosure is for the purpose of health planning or health administration,

“(iii) the information relates to health care provided in Ontario to a person who is resident of another province or territory of Canada, and

“(iv) the disclosure is made to the government of that province or territory;”

**The Chair:** Shall the amendment carry? Carried.

Shall section 48 of schedule A, as amended, carry? Carried.

Section 49: Shall section 49 of schedule A carry? Carried.

Section 50, page 75.

**Ms Wynne:** I move that subclause 50(1)(f)(i) of schedule A to the bill be struck out and the following substituted:

“(i) the custodian is an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act or is acting as part of such an institution, and”.

**The Chair:** Shall the amendment carry? Carried.

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

Shall section 51 of schedule A carry? Carried.

Section 52, page 76.

**Ms Wynne:** I move that clause 52(1)(c) of schedule A to the bill be amended by adding “providing a reason for the refusal” after “the custodian is refusing the request, in whole or in part”.

**The Chair:** Shall the amendment carry? Carried.

Page 77.

**Ms Wynne:** I move that subsection 52(2) of schedule A to the bill be amended by striking out “(b) or (c)” and substituting “(b), (c) or (d)”.

**The Chair:** Shall the amendment carry? Carried.

Page 78.

**Ms Wynne:** I move that clause 52(3)(b) of schedule A to the bill be struck out and the following substituted:

“(b) the time required to undertake the consultations necessary to reply to the request within 30 days after receiving it would make it not reasonably practical to reply within that time.”

**The Chair:** Shall the amendment carry? Carried.

Page 79.

**Ms Wynne:** I move that subsection 52(4.1) of schedule A to the bill be struck out and the following substituted:

“Expedited access

“(4.1) Despite subsection (2), the health information custodian shall give the response required by clause (1)(a), (b), (c) or (d) within the time period that the individual specifies if,

“(a) the individual provides the custodian with evidence satisfactory to the custodian, acting on a reasonable basis, that the individual requires access to the requested record of personal health information on an urgent basis within that time period; and

“(b) the custodian is reasonably able to give the required response within that time period.”

**The Chair:** Shall the amendment carry? Carried.

Page 80.

**Ms Wynne:** Do we need to pass section 52?

**The Chair:** No, page 80 is still—no, sorry.

**Ms Wynne:** Page 80 is 53.

**The Chair:** Thank you.

Shall section 52 of schedule A, as amended, carry? Carried.

The next one is section 53, page 80.

**Ms Wynne:** I move that clauses 53(10)(a), (a.1) and (b) of schedule A to the bill be struck out and the following substituted:

“(a) make the requested correction by,

“(i) recording the correct information in the record and,

“(A) striking out the incorrect information in a manner that does not obliterate the record, or

“(B) if that is not possible, labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information, or

“(ii) if it is not possible to record the correct information in the record, ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information;

“(b) give notice to the individual of what it has done under clause (a);”

1710

**The Chair:** Shall the amendment carry? Carried.

Shall section 53 of schedule A, as amended, carry? Carried.

Shall section 54 of schedule A carry? Carried.

Section 55, page 81.

**Ms Wynne:** I move that subsection 55(1) of schedule A to the bill be amended by striking out the portion before clause (a) and substituting the following:

“Response of commissioner

“55.(1) Upon receiving a complaint made under this act, the commissioner may inform the person about whom the complaint is made of the nature of the complaint and,”

**The Chair:** Shall the amendment carry? Carried.

Page 82.

**Ms Wynne:** I move that clause 55(2)(c) of schedule A to the bill be amended by striking out “58 or 59” and substituting “57”.

**The Chair:** Shall the amendment carry? Carried.

Page 83.

**Ms Wynne:** I move that subsections 55(7) and (8) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Shall section 55 of schedule A, as amended, carry? Carried.

Section 56, page 84.

**Ms Wynne:** I move that subsections 56(3) and (4) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Shall section 56 of schedule A, as amended, carry? Carried.

Section 56.1, page 85.



**Ms Wynne:** I move that schedule A to the bill be amended by adding the following section:

“Conduct of commissioner’s review

“56.1(1) In conducting a review under section 55 or 56, the commissioner may make the rules of procedure that the commissioner considers necessary and the Statutory Powers Procedure Act does not apply to the review.

“Evidence

“(2) In conducting a review under section 55 or 56, the commissioner may receive and accept any evidence and other information that the commissioner sees fit, whether on oath or by affidavit or otherwise and whether or not it is or would be admissible in a court of law.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 56.1 of schedule A, as amended, carry? Carried.

Section 57, page 86.

**Ms Wynne:** I move that subsections 57(17), (18), (19) and (20) of schedule A to the bill be struck out and the following substituted:

“Protection under federal act

“(17) The commissioner shall inform a person giving a statement or answer in the course of a review by the commissioner of the person’s right to object to answer any question under section 5 of the Canada Evidence Act.

“Representations

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

“Representative

“(19) A person who is given an opportunity to make representations to the commissioner may be represented by counsel or another person.

“Access to representations

“(20) The commissioner may permit a person to be present during the representations that another person makes to the commissioner or to have access to them unless doing so would reveal,

“(a) the substance of a record of personal health information, for which a health information custodian claims to be entitled to refuse a request for access made under section 51; or

“(b) personal health information to which an individual is not entitled to request access under section 51.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 57 of schedule A, as amended, carry? Carried.

Section 60, page 87.

**Ms Wynne:** I move that clause 60(1)(e) of schedule A to the bill be amended by adding “but only if the disposal of the records is not reasonably expected to adversely affect the provision of health care to an individual” at the end.

**The Chair:** Shall the amendment carry? Carried.

Shall section 60 of schedule A, as amended, carry? Carried.

Section 60.1, page 88.

**Ms Wynne:** I move that subsection 60.1(1) of schedule A to the bill be amended by adding “any of” after “made under”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 60.1 of schedule A, as amended, carry? Carried.

Shall section 61 of schedule A carry? Carried.

Section 62, page 89.

**Ms Wynne:** I move that clause 62(3)(b) of schedule A to the bill be amended by adding “any of” after “made under”.

**The Chair:** Shall the amendment carry? Carried.

Page 90.

**Ms Wynne:** I move that subsection 62(4) of schedule A to the bill be struck out and the following substituted:

“Appeal

“(4) A person affected by an order that the commissioner rescinds, varies or makes under any of clauses 60(1)(c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 60.1(2) to (5) apply to the appeal.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 62 of schedule A, as amended, carry? Carried.

Shall sections 63 through 68, inclusive, of schedule A carry? Carried.

Section 69, page 91.

**Ms Wynne:** I move that subsection 69(3) of schedule A to the bill be struck out and the following substituted:

“Substitute decision-maker

“(3) A person who, on behalf of or in the place of an individual, gives or refuses consent to a collection, use or disclosure of personal health information about the individual, makes a request, gives an instruction or takes a step is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with this act and its regulations.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 69 of schedule A, as amended, carry? Carried.

Section 70, page 92.

**Ms Wynne:** I move that clause 70(1)(a) of schedule A to the bill be struck out and the following substituted:

“(a) wilfully collects, uses or discloses personal health information in contravention of this act or its regulations;

“(b) makes a request under this act, under false pretences, for access to or correction of a record of personal health information;”

**The Chair:** Shall the amendment carry? Carried.

Page 93.

**Ms Wynne:** I move that clause 70(1)(d) of schedule A to the bill be struck out and the following substituted:

“(d) disposes of a record of personal health information in the custody or under the control of the cus-

todian with an intent to evade a request for access to the record that the custodian has received under subsection 51(1).”

**The Chair:** Shall the amendment carry? Carried.

Page 94.

**Ms Wynne:** I move that clauses 70(1)(f), (g), (h) and (i) of schedule A to the bill be struck out and the following substituted:

“(f) contravenes subsection 33(3), (4) or (5) or clause 45(15)(a), (e) or (f);

“(g) wilfully obstructs the commissioner or a person known to be acting under the authority of the commissioner in the performance of his or her functions under this act;

“(h) wilfully makes a false statement to mislead or attempt to mislead the commissioner or a person known to be acting under the authority of the commissioner in the performance of his or her functions under this act;

“(i) wilfully fails to comply with an order made by the commissioner or a person known to be acting under the authority of the commissioner under this act; or”

**The Chair:** Shall the amendment carry? Carried.

Page 95.

**Ms Wynne:** I move that subsection 70(3) of schedule A to the bill be struck out and the following substituted:

“Officers, etc

“(3) If a corporation commits an offence under this act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted.”

**The Chair:** Shall the amendment carry? Carried.

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

Page 96.

**Ms Wynne:** I move that clause 71(1)(k) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 98.

**Ms Wynne:** I move that subsection 71(1) of schedule A to the bill be amended by adding the following clause:

“(1.1) specifying requirements that an express instruction mentioned in clause 36(1)(a), 37(1)(a) or 48(1)(d) must meet;”

**The Chair:** Shall the amendment carry? Carried.

Page 98.

1720

**Ms Wynne:** I move that clause 71(1)(m) of schedule A to the bill be struck out and the following substituted:

“(m) permitting notices, statements or any other things, that under this act are required to be provided in writing, to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified by the regulations made under this act;”

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that subsection 71(1) of schedule A to the bill be amended by adding the following clause:

“(m.2) specifying information relating to the administration or enforcement of this act that is required to be contained in a report made under subsection 58(1) of the Freedom of Information and Protection of Privacy Act;”

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that subsection 71(4) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Shall section 71 of schedule A, as amended, carry? Carried.

**Ms Wynne:** I move that subsection 72(11) of schedule A to the bill be struck out and the following substituted:

“No review

“(11) Subject to subsection (12), neither a court, nor the commissioner shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

“Exception

“(12) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the minister has not taken a step required by this section.

“Time for application

“(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

“(a) the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), where applicable; or

“(b) the regulation is filed, if it is a regulation described in subsection (10).”

**The Chair:** Shall the amendment carry? Carried.

Shall section 72 of schedule A, as amended, carry? Carried.

Shall section 73 of schedule A carry? Carried.

**Ms Wynne:** I move that paragraphs 3 to 7 of subsection 19(2) of the Ambulance Act, as set out in subsection 74(3) of schedule A to the bill, be struck out and the following substituted:

“3. The minister and one of an upper-tier municipality and a delivery agent.

“4. An operator and one of an upper-tier municipality, a local municipality and a delivery agent.

“5. An operator and a medical director.

“6. A medical director and one of an upper-tier municipality and a delivery agent.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 74 of schedule A, as amended, carry? Carried.

Shall section 75 of schedule A carry? Carried.

Shall section 76 of schedule A carry? Carried.

**Ms Wynne:** I note that I’m reading from the new 103.

I move that subsections 77(3) and (4) of schedule A to the bill be amended by striking out “July 1, 2004” wherever that expression appears and substituting in each case “November 1, 2004”.

I need staff to explain this change.

**The Chair:** Is it November 1, 2004?

**Ms Perun:** That's right.

**The Chair:** Which one is the right one?

**Ms Perun:** The original motion that is in your package—the proclamation date was to be January 1, 2005. This was simply an oversight, because the Bill 8 amendments still carried the old date. That was simply an oversight from clause-by-clause at first reading. The new motion was to correct that, but the new motion that we have filed reflects a new proclamation date of November 1, 2004, moved a month back from October 1, 2004.

**Mr Ouellette:** OK. This is a new new one.

**Ms Perun:** It's a new new one. This reflects a discussion that Michael raised. So the date, everywhere it comes up October 1, will now be November 1.

**The Chair:** Any other questions? If none, shall the amendment carry, as read? Carried.

Shall section 77 of schedule A, as amended, carry? Carried.

Shall section 78 of schedule A carry? Carried.

**Ms Wynne:** I move that section 79 of schedule A to the bill be amended by adding the following subsection:

“(3.1) Subsection 65(1) of the act is amended by adding ‘or a health information custodian as defined in the Personal Health Information Protection Act, 2004’ at the end.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 79 of schedule A, as amended, carry? Carried.

Shall section 80 of schedule A carry? Carried.

Section 81, page 105.

**Ms Wynne:** I move that subsection 81(1) of schedule A to the bill be amended by striking out “July 1, 2004” in the portion before clause (a) and substituting “November 1, 2004.”

**The Chair:** That is a change again.

**Ms Wynne:** That was reading from the new new page 105, the brand-new page 105.

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 81 of schedule A, as amended, carry? Carried.

Section 82, page 106.

**Ms Wynne:** I move that subsection 82(3.1) of schedule A to the bill be struck out and the following substituted:

“(3.1) Subsection 20(8) of the act is repealed and the following substituted:

“Not spouse

“(8) Two persons are not spouses for the purpose of this section if they are living separate and apart as a result of a breakdown of their relationship.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 82 of schedule A, as amended, carry? Carried.

Shall sections 83, 84, 85 and 86 carry? Carried.

Section 87, page 107.

**Ms Wynne:** I move that subsection 87(20) of schedule A to the bill be struck out and the following substituted:

“(20) Paragraph 42 of subsection 68(1) of the act is repealed and the following substituted:

“42. Relating to the security, retention or disposal of a record of personal health information within the meaning of the Personal Health Information Protection Act, 2004, but only to the extent that a regulation made under this paragraph is consistent with that act and the regulations made under it.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 87 of schedule A, as amended, carry? Carried.

Section 88, page 108.

**Ms Wynne:** I move that paragraph 5 of subsection 88(5) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 109.

**Ms Wynne:** I need a clarification here. Is that part “twenty point one” or are those Xs holding a place?

**Ms Perun:** It's part XX.1.

**Ms Wynne:** I move that clause 35(2)(b) of the Mental Health Act, as set out in subsection 88(5) of schedule A to the bill, be struck out and the following substituted:

“(b) complying with part XX.1 (Mental Disorder) of the Criminal Code (Canada) or an order or disposition made pursuant to that part.”

**The Chair:** Shall the amendment carry? Carried.

Page 110.

**Ms Wynne:** I move that subsection 35(4) of the Mental Health Act, as set out in subsection 88(5) of schedule A to the bill, be amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following clause:

“(d) a prescribed person who is providing advocacy services to patients in the prescribed circumstances.”

**The Chair:** Shall the amendment carry? Carried.

Page 111.

**Ms Wynne:** I move that subsection 88(15.1) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 112.

**Ms Wynne:** I move that section 88 of schedule A to the bill be amended by adding the following subsection—sorry.

**Clerk of the Committee:** There's a new 111(a).

**Ms Wynne:** OK, I'm reading from 111(a). I apologize.

**The Chair:** OK, sorry. I've got two books.

**Ms Wynne:** So, does everybody have the new 111(a)? That's what it says on mine.

**The Chair:** Yes, 111(a), subsection 88(16), clause 81(h.2).

**Ms Wynne:** Yes. I move that section 88 of schedule A to the bill be amended by adding the following subsection:

“(16) Section 81 of the act, as amended by the Statutes of Ontario, 1996, chapter 2, section 72, 1997, chapter 15,

section 11 and 2000, chapter 9, section 30, is amended by adding the following clauses:

**1730**

“(h.2) requiring that a physician who determines that a patient is incapable of consenting to the collection, use or disclosure of personal health information promptly,

“(i) give the patient a written notice that sets out the advice that the regulation specifies with respect to the patient’s rights, and

“(ii) notify a rights adviser;

“(h.3) requiring the rights adviser mentioned in clause (h.2) to give the patient the explanations that the regulation specifies and governing the content of the explanations;”

**The Chair:** Shall the amendment carry? Carried.

Now I’ve got 112 here.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** Mr Chair, I have a question. Page 111 is gone, then?

**The Chair:** We did carry that.

**Mr Yakabuski:** OK, I’m sorry. It was so quick.

**Mr Parsons:** We voted for it.

**Ms Wynne:** But we’re still on section 88, right?

**The Chair:** Yes.

**Ms Wynne:** On page 112?

**The Chair:** Page 112.

**Ms Wynne:** I move that section 88 of schedule A to the bill be amended by adding the following subsection:

“(21) Subsection 81(1) of the act, as amended by the Statutes of Ontario, 1996, chapter 2, section 72, 1997, chapter 15, section 11 and 2000, chapter 9, section 30, is amended by adding the following clause:

“(k.4) prescribing a person and circumstances for the purpose of clause 35(4) (d);”

**The Chair:** Shall the amendment carry? Carried.

Shall section 88, schedule A, as amended, carry? Carried.

Next is sections 88.1 to 94. Shall those sections of schedule A carry? Carried.

Section 95: We have one, 112(A).

**Ms Wynne:** Yes. Note that I’m reading from new 112(A).

I move that section 95 of schedule A to the bill be struck out and the following substituted:

“Commencement

“95.(1) Subject to subsection (2), this schedule comes into force on the day the Health Information Protection Act, 2004 receives royal assent.

“Same

“(2) Sections 1 to 70 and 73 to 94 come into force on October 1, 2004.”

**The Chair:** Shall the amendment carry as read? Carried.

Shall section 95 of schedule A, as amended, carry? Carried.

Shall section 96 of schedule A carry? Carried.

Shall schedule A, as amended, carry? Carried.

Schedule B, section 1, page 113.

**Ms Wynne:** I move that clause (e) of the definition of “health care” in section 1 of schedule B to the bill be struck out and the following substituted:

“(e) a prescribed type of service;”

**The Chair:** Shall the amendment carry? Carried.

Page 114.

**Ms Wynne:** I move that subclause (a)(iii) of the definition of “quality of care committee” in section 1 of schedule B to the bill be struck out and the following substituted:

“(iii) by an entity that is prescribed by the regulations and that carries on activities for the purpose of improving or maintaining the quality of care provided by a health facility, a health care provider or a class of health facility or health care provider;”

**The Chair:** Shall the amendment carry? Carried.

Page 115.

**Ms Wynne:** I move that clause (b) of the definition of “quality of care committee” in section 1 of schedule B to the bill be struck out and the following substituted:

“(b) that meets the prescribed criteria, if any, and”

**The Chair:** Shall the amendment carry? Carried.

Page 116.

**Ms Wynne:** I move that clause (c) of the definition of “quality of care committee” in section 1 of schedule B to the bill be struck out and the following substituted:

“(c) whose functions are to carry on activities for the purpose of studying, assessing or evaluating the provision of health care with a view to improving or maintaining the quality of the health care or the level of skill, knowledge and competence of the persons who provide the health care;”

**The Chair:** Shall the amendment carry? Carried.

Page 117.

**Ms Wynne:** I move that the definition of “quality of care information” in section 1 of schedule B to the bill be amended by adding “or” at the end of clause (a), by striking out “or” at the end of clause (b) and by striking out clause (c).

**The Chair:** Shall the amendment carry? Carried.

Page 118.

**Ms Wynne:** I move that clauses (d), (f) and (g) of the definition of “quality of care information” in section 1 in schedule B to the bill be struck out and the following substituted:

“(d) information contained in a record that is maintained for the purpose of providing health care to an individual,

“(f) facts contained in a record of an incident involving the provision of health care to an individual except if the facts involving the incident are also fully recorded in a record mentioned in clause (d) relating to the individual; or

“(g) information that a regulation specifies is not quality of care information and that a quality of care committee receives after the day on which that regulation is made;”

**The Chair:** Shall the amendment carry? Carried.

Page 119.

**Ms Wynne:** I move that clause (c) of the definition of “witness” in section 1 of schedule B to the bill be amended by adding “or cross-examined” after “examined”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 1 of schedule B, as amended, carry? Carried.

Shall section 2 of schedule B carry? Carried.

Shall section 3 of schedule B carry? Carried.

Section 4. Page 120.

**Ms Wynne:** I move that subsection 4(3) of schedule B to the bill be struck out and the following substituted:

“Exception, quality of care committee

“(3) Despite subsection (1) and the Personal Health Information Protection Act, 2004, a quality of care committee may disclose quality of care information to,

“(a) the management of the health facility or entity mentioned in subclause (a)(ii) of the definition of ‘quality of care committee’ in section 1 that established, appointed or approved the committee if the committee considers it appropriate to do so for the purpose of improving or maintaining the quality of health care provided in or by the facility or entity; or

“(b) the management of a health facility or health care provider, where an entity mentioned in subclause (a)(iii) of the definition of ‘quality of care committee’ in section 1 carries on activities for the purpose of improving or maintaining the quality of health care provided by the facility, the provider or a class including the facility or the provider, if the committee considers it appropriate to do so for the purpose of improving or maintaining the quality of health care provided in or by the facility, provider or class.”

**The Chair:** Shall the amendment carry? Carried.

Page 121.

**Ms Wynne:** I move that subsection 4(6) of schedule B to the bill be amended by adding “or maintaining” after “improving”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 4 of schedule B, as amended, carry? Carried.

Shall section 5 of schedule B carry? Carried.

Shall section 6 of schedule B carry? Carried.

Section 7, page 122.

**Ms Wynne:** I move that subsection 7(3) of schedule B to the bill be struck out and the following substituted:

“Officers, etc

“(3) If a corporation commits an offence under this act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 7 of schedule B, as amended, carry? Carried.

Section 8, page 123.

**Ms Wynne:** I move that subsection 8(1) of schedule B to the bill be amended by striking out “for damages”.

**The Chair:** Shall the amendment carry? Carried.

Page 124.

**Ms Wynne:** I move that subsection 8(2) of schedule B to the bill be amended by striking out the portion before clause (a) and substituting the following:

“Same, committee member

“(2) No action or other proceeding, including a prosecution for an offence under section 7, may be instituted in respect of,”

**The Chair:** Shall the amendment carry? Carried.

Shall section 8 of schedule B, as amended, carry? Carried.

Section 9, page 125.

**Ms Wynne:** I move that clause 9(1)(b) of schedule B to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 126.

**Ms Wynne:** I move that clauses 9(1)(c) and (c.1) of schedule B to the bill be struck out and the following substituted:

“(c) specifying information for the purpose of clause (g) of the definition of ‘quality of care information’ in section 1;”

**The Chair:** Shall the amendment carry? Carried.

Page 127.

**Ms Wynne:** I move that subsection 9(2) of schedule B to the bill be struck out and the following substituted:

“Minister’s regulations

“(2) The minister may make regulations prescribing anything that the definition of ‘health care’ or ‘quality of care committee’ in section 1 mentions as being prescribed.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 9 of schedule B, as amended, carry? Carried.

Section 10, page 128.

#### 1740

**Ms Wynne:** I move that subsection 10(11) of schedule B to the bill be struck out and the following substituted:

“No review

“(11) Subject to subsection (12), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

“Exception

“(12) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the minister has not taken a step required by this section.

“Time for application

“(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

“(a) the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), where applicable; or

“(b) the regulation is filed, if it is a regulation described in subsection (10).”

**The Chair:** Shall the amendment carry? Carried.

Shall section 10 of schedule B, as amended, carry? Carried.

**Ms Wynne:** I move that the definition of “quality assurance information” in subsection 83.1(1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be amended by adding “or” at the end of clause (c), by striking out—I’m sorry. I’m just not clear whether this is a typo or whether I’m just losing my mind. Sorry.

**Mr Yakabuski:** I move that it’s a typo.

**The Chair:** It’s a typo.

**Ms Wynne:** OK. Can we then change the typo?

**The Chair:** Remove that.

**Ms Wynne:** OK. I’m going to read a new version then of page 129.

I move that the definition of “quality assurance information” in subsection 83.1(1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be amended by adding “or” at the end of clause (c), by striking out “or” at the end of clause (d) and by striking out clause (e).

**The Chair:** Shall the amendment carry, as read? Carried.

**Ms Wynne:** I move that clause (h) of the definition of “quality assurance information” in subsection 83.1 (1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be struck out and the following substituted:

“(h) information that a regulation made under this code specifies is not quality assurance information and that the Quality Assurance Committee receives after the day on which that regulation is made;”

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that clause (a) of the definition of “witness” in subsection 83.1(1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be amended by adding “or cross-examined” after “examined”.

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that subsection 83.1(7) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be struck out and the following substituted:

“Non-retaliation

“(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to the Quality

Assurance Committee under subsection (3), but a person may be disciplined for disclosing false information to the committee.”

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that subsection 10.1(3) of schedule B to the bill be struck out and the following substituted:

“(3) Subsection 95(1) of schedule 2 to the act, as re-enacted by the statutes of Ontario, 1998, chapter 18, schedule G, section 23, is amended by adding the following clause:

“(r.1) specifying information for the purposes of clause (h) of the definition of ‘quality assurance information’ in subsection 83.1(1);”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 10.1 of schedule A, as amended, carry? Carried.

**Ms Wynne:** I’ll note that I’m reading from the new new 134.

I move that section 11 of schedule B to the bill be struck out and the following substituted:

“Commencement

11(1) Subject to subsection (2), this schedule comes into force on the day the Health Information Protection Act, 2004 receives royal assent.

“Same

“(2) Sections 1 to 8 and subsections 10.1(1) and (2) come into force on November 1, 2004.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 11 of schedule B, as amended, carry? Carried.

Section 12: Shall section 12 of schedule B carry? Carried.

Shall section B, as amended, carry? Carried.

Shall sections 1 through 4 of Bill 31 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 31, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

That’s it.

**Mr Yakabuski:** I’d like to commend Ms Wynne for getting us through these in this time. There are some things that I can do speedily but reading isn’t one of them.

**The Chair:** I thank her very much and thank you very much for your co-operation. Thanks to the staff also for the good work they have done. Enjoy the rest of the day and enjoy the game tonight.

*The committee adjourned at 1746.*



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Ms Shelley Martel (Nickel Belt ND)

Ms Kathleen O. Wynne (Don Valley West / -Ouest L)

### Also taking part / Autres participants et participantes

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Mr Michael Orr, legal services branch, Ministry of Health and Long-Term Care

Ms Halyna Perun, legal services branch, Ministry of Health and Long-Term Care

### Clerk pro tem / Greffière

Ms Tonia Grannum

### Staff /Personnel

Mr Michael Wood, legislative counsel