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Monday 30 May 2005

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Lundi 30 mai 2005

Standing committee on social policy

Comité permanent de la politique sociale

Adoption Information Disclosure Act, 2005

Loi de 2005 sur la divulgation de renseignements sur les adoptions

Chair: Mario G. Racco
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 30 May 2005

Lundi 30 mai 2005

The committee met at 1558 in committee room 1.

ADOPTION INFORMATION DISCLOSURE ACT, 2005

LOI DE 2005 SUR LA DIVULGATION DE RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

The Chair (Mr. Mario G. Racco): Good afternoon again, and welcome. We are discussing Bill 183 and we are going to deal with clause-by-clause.

Mr. Cameron Jackson (Burlington): On a point of order, Mr. Chairman: We have been rather concerned and confused by some of the developments of the last couple of hours. I found out about the amendments by reading this morning's newspaper and did not receive copies of the government's amendments; I think they're about 30-some pages—39 pages. We received those at 1:30 in the House, so we've not had time to do question period and read these amendments. I just wondered, Mr. Chairman, if in your opinion they're in order, given the fact that the subcommittee report clearly indicates that these amendments should have been put in the hands of all parties in a somewhat more timely fashion. Clearly, the NDP and the Conservatives were able to assemble their amendments and get them in.

I'm concerned, first of all, that the terms that we've been told we had to adhere to under the subcommittee report are being violated, but perhaps more importantly than that, even with a degree of flexibility, we've not had a chance to have a look at these. We read in the newspaper that the minister had two reactions: one reaction to Commissioner Cavoukian's comments, and the second reaction was to some of the issues that I first raised in the Legislature about cultural prejudices that can occur even among some cultural groups in Ontario today. I'm pleased to see that the minister has acknowledged that in her comments. So there's that issue.

The second issue is that these amendments are of a highly technical nature and we'd like to know if staff are here from the ministry to explain them to us, because we've not had time to seek any kind of an understanding of their legal intent, and neither have Ms. Cavoukian and her staff, who have expressed a sincere interest.

Another complicating factor is that, to my knowledge, we don't have Hansard as of yet for each of the days that we've had the public hearings. I could be corrected on that.

Interjection: We do have them.

Mr. Jackson: We do have Hansard? OK, fine. Because I knew they were backed up, but we do have them; that's good.

Mr. Chairman, I'd like to know what your ruling is in this situation. There were attempts earlier to try to begin this process in earnest tomorrow so that we do have sufficient time. As someone who has gone on the public record as wanting to see this legislation go through, I need tomorrow, which is the day I speak to my caucus, and when I speak to my caucus I want to be able to explain to them these amendments. So I'm really looking for a ruling, and maybe other members would wish to comment. This is rather highly unusual, to receive this many amendments an hour and a half before we're required to vote on them. In my 20 years, I've not experienced it.

The Chair: Mr. Jackson, you raised three questions. The third question has already been answered, and that is that we do have the Hansards.

On the second question: In regard to staff, I know there is some staff. Is anybody from the Attorney General—yes, Mr. Parsons?

Mr. Ernie Parsons (Prince Edward–Hastings): Yes, Chair, we have two people with us to provide technical advice: Susan Yack, counsel from the legal services branch, and Marla Krakower, manager of the adoptions disclosure project.

The Chair: Thank you.

On the first question, it's my understanding that notice of amendments must be given within two hours, and that has been met, so the time that needs to be given was given properly. I appreciate your comments on the amount and importance—you may want additional time—but they have met the requirements of the law and therefore I don't have any difficulty ruling that we can proceed with the meeting. I think there is significant interest in the community to deal with this matter as soon as possible, and I believe we can, but I will be happy to hear from you, Mr. Sterling, and anybody else.

Mr. Norman W. Sterling (Lanark–Carleton): The general rule is you have to file amendments two hours before, and that's generally intended in terms of something that arises during what you're doing and you amend the legislation at that point in time. But the committee did adopt the decisions of the subcommittee report, and the subcommittee report says in point 9 that amendments to Bill 183 should be received by the clerk of the committee by 5 p.m. on Thursday, May 26, 2005. These amendments were not received by the committee clerk. So I would say that that would supersede the general rule that we have about the two-hour limit.

The whole purpose, I think, of the subcommittee report was to try to set down a time frame so that we could come to this meeting and vote with some intelligence and debate with some intelligence as to what was being proposed. I would like to have the ministry people come forward and go through their amendments and explain what the new regime that is put forward by the amendments is all about before we get into the clause-by-clause.

The Chair: I hear what you're saying. I'm going to allow Ms. Wynne to give me her reasoning on the timing and so on and then, if I have to change my ruling, I'll be happy to do that. But let's do that and then I will try to answer the last question that you asked about the ministry.

Ms. Kathleen O. Wynne (Don Valley West): Thank you, Mr. Chair. Two points: The subcommittee report said that the amendments should be received by that time, not that they must be. So it's absolutely within the scope of the subcommittee report that we would get these amendments today. Secondly, on the issue of the staff coming forward, my understanding from other committee processes is that as we go through clause-by-clause it's absolutely possible for staff to bring clarifications, and they're in the room. It's my suggestion that we could get going on the clause-by-clause and staff could help us as we go along, if that's necessary.

The Chair: That's what I was going to recommend. That's what we have done in the past, that as we have some technical questions, staff is here for that purpose, to assist all of us with any questions we have. I would suggest we proceed as intended, but I do note your comments. Do you still have some questions, Mr. Sterling?

Mr. Sterling: Yes, I do, Mr. Chair. As I understand it, this is a whole new regime that's being inserted in the bill after second reading. The government or a member doesn't have the right to insert whatever they want in a bill. It has to be included in the bill and you can amend it from there, because the Legislature has already voted on the package and now we are essentially considering that package plus a new package. The legislative process is such that, after second reading, you have to view these amendments as to whether they were considered in the original legislation that was debated in the House. This is why I wanted an explanation from the ministry and legislative counsel as to how they fit within the original framework of the legislation.

The Chair: Mr. Parsons, staff from your ministry may want to answer that question. Again, I believe we can proceed with the meeting. If you need additional—

Mr. Sterling: You have to rule on whether or not these amendments fall within the ambit of the bill that was debated on second reading.

The Chair: The clerk is informing me that I can do that as the motions are introduced, which is what we normally do. If that is the case and if you raise a question on that specific motion, then I'll be happy to rule at that time. I'm told that is the way it's done and that's the way I intend to proceed, if there is no disagreement. Can we do that, please?

Ms. Marilyn Churley (Toronto–Danforth): Yes, it's in order.

The Chair: Thank you. We already did the introduction and I guess the first item would be to the third party, motion 1. Would you like to introduce it, please?

Ms. Churley: I move that the definition of "birth parent" in section 1 of the Vital Statistics Act, as set out in section 1 of the bill, be amended by adding at the end "or the person who is identified in a registered adoption order, or in the court file relating to the adoption order, as the biological father of the adopted person."

The Chair: Any comments?

Ms. Churley: Yes. Just briefly, this amendment—we heard a lot about this in the deputations—recognizes the birth father. We know there have been historic problems with identifying the birth father because the name doesn't appear on the original registration, because often social workers followed the accepted practice of the day and actively discouraged us birth mothers, or simply did not allow unmarried mothers to name the father on the birth registration, so they aren't named. Adoptees and birth fathers should not be penalized because of past practices.

Many of the deputants told us that the birth fathers want to be recognized, and also a lot of adoptees need that information, particularly for health and other reasons. In many cases, while not listed on the birth certificate, the father is identified as acknowledging paternity in the adoption file itself. If the birth name is not named on the original birth registration but is named in the adoption files based upon credible and trustworthy information, then it shall be considered as if he were named in the original registration. So this amendment is to remedy the problem we heard about from some of the deputants who are here today.

The Chair: Any debate?

Mr. Parsons: I have no quarrel with the motion other than that we believe it is too restrictive. Given the new, modern technologies it is our belief it would be better covered by our amendment, which provides for regulations to, from time to time, change the definition of "birth parent" as society evolves. I certainly will not be supporting the amendment, because I feel it needs to be even more open.

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The Chair: Any other comments or debate?

Mr. Sterling: What does this mean in terms of access to the records? Does it mean the birth father has access to the records?

Mr. Parsons: The birth father would have access to the birth records, yes.

Mr. Sterling: And how would he prove that he was the birth father?

Mr. Parsons: If you're asking me to defend this amendment, I would suggest that it would be better explained by—

Ms. Churley: I can explain, and I did a little bit in my overview. Quite frequently, the birth fathers are named within what we refer to—which, Mr. Sterling, you're aware of—as the non-identifying information, but not named in the original birth registration. So you have a strange situation: The birth father is frequently named within the file at CAS but not on the actual birth registration. This would remedy that situation where there's information in one file but not in the other.

I understand that the Liberals' next amendment deals with that, but without specifically referring to the actual birth or biological father. It's more general in the definition of a birth parent, whereas I'm much more specific about it. It's to aid birth fathers and adoptees in getting information.

The Chair: Any other comments? If there are no other comments, I will now put the question.

Mr. Jackson: Recorded vote.

The Chair: Shall the motion carry?

Ayes

Churley, Jackson.

Nays

Brownell, Leal, Parsons, Ramal, Wynne.

The Chair: The motion fails to carry.

The next one is page 2, the government.

Mr. Parsons: I move that the definition of "birth parent" in section 1 of the Vital Statistics Act, as set out in section 1 of the bill, be amended by adding at the end "and such other persons as may be prescribed."

I think I've commented on this. This basically opens it up so that by regulation—there are still, as we evolve as a society, some questions that need to be answered as to who is the birth father or birth mother. This would allow, from time to time, changes to reflect what that definition is at that point in time.

Ms. Churley: I'm not going to belabour this, so to speak, but what do you mean that over time the definitions of "birth parent" change? The birth father and birth mother are the biological parents; how can it change?

Mr. Jackson: Mr. Parsons referred to new technologies. I'm just trying to understand the real purpose of this. We have public hearings to hear from the community about where there are gaps in the legislation; we never heard about this. Perhaps we could ask the legal counsel to come forward and explain this, because I'm at a loss to understand what you're trying to achieve here. The legislation speaks to birth parents by gender because of aspects of—if perhaps counsel can explain it to us.

The Chair: Mr. Parsons, can you get somebody from staff?

Mr. Parsons: Yes. I think there are a number of examples, but I can think of a gay couple who are two women, where artificial insemination is involved. Should one of them have the status of father? I don't think that question has been answered under law at this point in time. It may need to be at some time. When that question is resolved, we believe that there needs to be the flexibility to reflect that decision. In the case where you have artificial insemination, I don't think there are answers as to who technically should be termed the father.

Mr. Jackson: There's an extensive ethical paper on the subject that Maureen McTeer worked on for a couple of years which answers that question. But at this point in time, I'd like legal counsel—because you have the power to create regulations. Ms. Churley's amendment was very clear and very specific, and responds to a whole group of individuals out there in society who would like to be acknowledged.

Mr. Parsons: It may be a very good paper, but I would suggest a good paper does not establish legal definitions.

The Chair: A question was asked of staff, and I would appreciate it if staff answered. First of all, identify yourself, please.

Ms. Susan Yack: My name is Susan Yack. I'm counsel with the Ministry of Community and Social Services.

The Chair: Would you be able to answer Mr. Jackson's question?

Ms. Yack: The amendment just gives the flexibility to prescribe a further definition by regulation. It could address a number of situations where currently "birth parent" is defined and a father meets the definition of "birth parent" in certain circumstances. It could be further defined by regulation. It could address new reproductive technologies. It leaves the definition open to further definition by regulation.

Mr. Jackson: So it could include artificial insemination by a sperm donor.

Ms. Yack: It could, depending on what the regulation drafted.

Mr. Jackson: I'm not sure I've been able to put my mind around that. Perhaps the government members have. In the meantime, there's no guarantee we'll get regs to cover off the biological father where the matter isn't in dispute from a technical point of view.

Ms.Yack: No, but those biological fathers who meet the definition of "parent" would currently be covered.

Mr. Jackson: Where does that occur in the bill?

Ms. Yack: It's a birth parent whose name appears on the original registration, so it would depend if his—

Ms. Churley: They're not included.

Mr. Jackson: So they're not included, according to Ms. Churley.

The Chair: Mr. Jackson, you've got your answer.

Mr. Jackson: Are there any other examples that I'm missing besides artificial insemination or sperm donors and gay couples? Are there any other examples that you've been—

Mr. Parsons: I would think one example would work.

The Chair: The question was, are there any others? There is no answer to your question, Mr. Jackson, unless staff—would you mind staying there, please? Any other comments?

Mr. Sterling: I think we'd like the opportunity to draft an amendment to this amendment. Therefore, I would ask that this one be stood down until we have that opportunity. I think there should be some limitations on how far this regulation power can go.

The Chair: The question has been made. Is there consent to stand down this amendment?

Ms. Wynne: Can I just be clear, Mr. Chair? The request is to stand down the amendment until what time?

Mr. Sterling: Until we're finished with the rest of the bill.

Ms. Wynne: So come back to it at the end. Fine.

The Chair: Is there agreement with that? OK. So we'll stand down section 1 until we deal with that amendment.

Next is section 2, page 3.

Mr. Parsons: Chair, I would like to ask that sections 2 and 6 of the bill be stood down until we have dealt with section 8 of the bill.

The Chair: Do we have agreement on that?

Mr. Parsons: I certainly will stand down the government motions relating to sections 2 and 6, but I would ask if the other parties would do the same for their amendments to those two sections.

The Chair: Is there agreement to stand this down?

Mr. Sterling: Sorry, what are you asking, Ernie?

Mr. Parsons: I'm asking if you would consider standing down sections 2 and 6 until we have dealt with section 8. Once we've dealt with section 8, we'll return to sections 2 and 6.

Mr. Sterling: What is section 8? What is your amendment on it? Sorry, we just haven't had a chance to read your amendments.

Mr. Parsons: If you move to—

Mr. Sterling: What page is it on? Page 21?

Mr. Parsons: Yes.

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Ms. Churley: I'm afraid we're getting really hung up on this particular section. Although there are some concerns about it, if we start standing down those sections—in some ways they have some pretty important meat of some of the disputes around this bill, around disclosure vetoes and things—I'm just afraid we're going to get all messed up in certain other sections because we haven't yet dealt with these particular pieces around the disclosure veto or the new amendments that the Liberals are making. So could we have some clarification on how we can move forward in such a way that we don't end up—

Interjection.

The Chair: Sorry. Ms. Churley, you still have the floor.

From what I understand, Ms. Churley, I'm told we should stand it down because we have stood down section 1. I'm told that's the wise thing to do. No?

Interjection.

The Chair: We should stand down section 2 until we deal with section 8, because we should deal with section 8 before we deal with section 2. That's what I'm advised.

Ms. Churley: How long are we going to stand this thing down for?

The Chair: Until we deal with section 8. Can we have agreement with that, please?

Ms. Wynne: Is this just section 2, or sections 2 and 6?

Mr. Parsons: Sections 2 and 6.

The Chair: That's what you asked.

Mr. Parsons: If the section 8 amendment does not pass, then sections 2 and 6 will have been wasted time.

The Chair: So basically we are standing down sections 2 and 6 until we deal with section 8.

Mr. Parsons: Right.

The Chair: Again, do I have agreement on that? Yes.

Therefore, we move to the next one. We can deal with section 3 now. There is no amendment, so shall section 3 carry? Those in favour? Those against? Section 3 carries.

Section 4 has no amendment. Shall section 4 carry? All in favour?

Mr. Sterling: No, just a minute. What's section 29 of the act? We're repealing it. What is it?

Ms. Wynne: Mr. Chair, I'm just wondering if we could get staff to clarify section 29 for Mr. Sterling.

The Chair: Yes, I'll be happy to. Staff have been asked to stay there until the meeting is over, so you can assist us whenever we need you. Would you please answer the question, if you can?

Ms.Yack: I'll read section 29 of the Vital Statistics Act. It provides for—

The Chair: I think it's wise to wait until Mr. Sterling has your attention; that way, we don't have to go over it again. Can we proceed, Mr. Sterling? Would you please answer the question for Mr. Sterling.

Mr. Sterling: I've had it explained.

The Chair: OK. Then we can deal with section 4. Shall section 4 carry? Those in favour? Those against? Section 4 carries.

Section 5 is the same situation. Shall section 5 carry? Those in favour? Those opposed? Carried.

Section 6 was stood down, so we go to the new section 6.1, page 18. Who is moving that? Is the government moving it?

Mr. Parsons: It was my hope, my intention, that section 6.1 be interpreted as part of section 6.

Interjection.

Mr. Parsons: It is not. Lawyers always make trouble for me.

The Chair: It's a new section. There are two sections, Mr. Parsons.

Mr. Parsons: I just remembered what I was thinking.

The Chair: OK. Mr. Parsons, you have the floor.

Mr. Parsons: I move that the bill be amended by adding the following section after section 6:

"6.1 The act is amended by adding the following section:

"'Notice, preferred manner of contact

"'Adopted person

"'48.2.2(1) Upon application, an adopted person who is at least 18 years old may register a notice specifying his or her preferences concerning the manner in which a birth parent may contact him or her.

"'Birth parent

"'(2) Upon application, a birth parent may register a notice specifying his or her preferences concerning the manner in which an adopted person may contact him or her.

"'When notice is in effect

"'(3) A notice is registered and in effect when the registrar general has matched it with the original registration, if any, of the adopted person's birth or, if there is no original registration, when the registrar general has matched it with the registered adoption order.

"'Exception

"'(4) Despite subsection (3), a notice registered by an adopted person with respect to a birth parent does not come into effect if, before the match is made, the registrar general has already given that birth parent the information described in subsection 48.2(1).

"'Same

"'(5) Despite subsection (3), a notice registered by a birth parent does not come into effect if, before the match is made, the registrar general has already given the adopted person the uncertified copies of registered documents described in subsection 48.1(1).

"'Withdrawal of notice

"'(6) Upon application, the adopted person or birth parent, as the case may be, may withdraw the notice.

"'Same

"'(7) If a notice is withdrawn, it ceases to be in effect when the registrar general has matched the application for withdrawal with the notice itself.

"'Administration

"'(8) Subsections 2(2) to (4) do not apply to notices registered under this section.'"

The Chair: Mr. Parsons, are there any comments that you want to make before I recognize the floor?

Mr. Parsons: This is intended to be an addition to the no-contact, not a replacement for the no-contact. It is to provide so that an individual can specify, while I would ask that you note that there are no consequences if a person asks for it to be filed one way and it is, in fact, filed a different way. It is hoped that it will be able to accommodate people's preferences.

Mr. Sterling: I don't know how you deal with this one without dealing with section 6 of their government motion. We're amending two sections that are tied together. You've asked to put one off, and you haven't asked to put the companion one off. It makes no sense to vote on this or to consider it.

The other one is; is this one in order, Mr. Chair?

The Chair: In my opinion, it is in order; on the second question, I can answer. Can staff assist us on Mr. Sterling's comments—on the first part, that is?

Ms. Yack: Well, I understood that section 6 was stood down because it refers to matters in section 8 which deal with orders under subsection 48.4 and so on, whereas section 6.1 does not.

Ms. Churley: Look, I didn't vote one way or the other. I think what we're trying to do here is nuts. We're all confused and wondering where we are and how what relates to what. I think we should go back, even if it means taking a five-minute break, and deal with that one we set aside. We know the implications of it. It's not as strong as mine, but it's trying to deal with it. I'd suggest that we deal with it, vote on it one way or the other and move on, or we're going to spend the rest of the afternoon going back and forth on this and not getting—if we follow these in order, they make sense as we progress. Doing it this way, everybody is confused.

The Chair: Ms. Yack, can I ask your opinion? The question I understood was that we couldn't deal with this section until we dealt with the prior section. The question here is, is that correct? Can we deal with the section now or not?

Mr. Jackson: That's what legislative counsel is here to assist us with, and I'd be taking direction from legislative counsel, who is here to assist the committee.

The Chair: That's fine. As long as we get a professional opinion, Mr. Jackson, I'm happy, so that maybe we can accept the opinion. Would staff give an opinion on that, please?

1630

Ms. Laura Hopkins: I'm happy to. Section 6 of the bill is the section that creates the authority and the duty to disclose information to adopted persons and to birth parents. There are certain exceptions that are created, and there's a proposal in section 8 of the bill to create an order preventing disclosure in certain circumstances. There are also some motions dealing with section 8 proposing further restrictions on disclosure.

The reason the suggestion is made to stand down section 6 is to allow the committee to deal with the exceptions, and having made decisions about exceptions, to then deal with the provisions that create the duty to disclose, because the duty to disclose will be subject to those exceptions. If you deal with the duty to disclose first, then the discussion about the exceptions may be out of order. So although I appreciate that it's confusing for members of the committee—

The Chair: So it's OK and it's in order? That's what you're saying? Can we then move on with this item? Is

there any further debate on this amendment? If there is no further debate—

Mr. Sterling: Yes, there is. I'd like to ask some questions.

The Chair: Yes, of course.

Mr. Sterling: Is this the no-contact section?

The Chair: Staff, can you answer?

Ms. Hopkins: This provision doesn't deal with no-contact. What this provision deals with is the manner in which contact is made. It would create not a restriction on contact, but it would allow a person to express a preference about how they would like to be contacted.

Ms. Churley: It's benign; it's good.

Mr. Sterling: OK.

The Chair: Any other debate? If there is no other debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Section 7, page 19: Ms. Churley, it's your motion, please.

Ms. Churley: I move that subsection 48.3(4) of the Vital Statistics Act, as set out in section 7 of the bill, be struck out and the following substituted:

"Additional information

"(4) The notice may include a brief statement of the person's reasons for not wishing to be contacted and shall include a written statement that summarizes any information he or she may have about,

"(a) any genetic conditions that the person has, and any past and present serious illnesses;

"(b) any genetic conditions and past and present serious illnesses of the person's parents and of,

"(i) the other birth parent and his or her parents, or

"(ii) the other biological parent, if only one person's name appears on the original birth registration as parent, and his or her parents;

"(c) the cause of death and age at death of any of the persons described in clause (b) who are deceased;

"(d) any other health-related matters that may be relevant."

If I may just comment on the amendment, I know that the existing bill encourages but doesn't make it mandatory that people provide this information. Certainly, in my previous bills, it was mandatory. The reason why is—we've raised this frequently—that there are now more than 300,000 Ontarians at risk because of the over 2,500 inheritable diseases that we now know about. Dr. Philip Wyatt, chief of genetics at the North York General Hospital—Mr. Jackson, you'll remember—came and spoke to us in the last Legislature about how absolutely critical it is, because we now know there are so many genetic diseases that are passed on. In fact, the previous government brought in special screening, which I applauded, for breast cancer and, I believe, ovarian, although I'm not sure, and other kinds of illnesses. If it runs in the family, there are special screening opportunities for those people, while adoptees don't get that opportunity, and that's just one example.

We've had another example before this committee on one of my bills where a woman came forward, Kariann Ford, who had inherited a very serious kidney disease that she didn't know about. She passed it on to her children. She sued and—a long story. But these are just a couple of examples of very, very serious situations that we know about. It really comes down to life-and-death situations, so I believe very strongly that that kind of information should be mandatory if people, for whatever reasons, don't want the contact.

Mr. Jackson: I have spoken to this issue in the House on several occasions, and I fully support it. This is the kind of motion that saves lives, so it's very clearly an opportunity to make this bill better.

Mr. Parsons: I think the intent of this is admirable; however, I cannot support it because at the present time, under law, a non-adopted individual is not entitled to health information of their birth parent. There's no requirement that the birth parent provide it to them. If this amendment would require—because it says "shall"—that it be provided to the adoptee, there's no way to enforce this. This is pretty hollow in the sense that there's no mechanism that can make this happen, in fact. So there's no use creating the impression that they're entitled to it when there's no mechanism to make it happen.

Mr. Jackson: Is that the legal opinion shared by the ministry? I'd like to put them on the record.

Ms. Yack: I don't know that I can give legal opinions here. I think my role is to provide information about the bill and about the statute as it is.

The Chair: Thank you. Any further debate? If there is none, I will now—

Mr. Jackson: We also have someone here who's responsible for the administration of the current act. Can she confirm that this is a request that is not uncommon for families who are trying to make the matches?

Ms. Marla Krakower: A request for medical information?

Mr. Jackson: Well, let's put "mandatory" aside. It's the nature of the information that I think is vital. We can argue whether it's mandatory, but in Mr. Parsons's world, it wouldn't appear anywhere on the form. In Ms. Churley's world, it should appear on the form. Whether you get them to sign it is another story, but at least it's there to assist the person.

The Chair: Will you introduce yourself for the record, please.

Ms. Krakower: Marla Krakower. I'm the manager of the adoptions disclosure project.

I think the intent is that the information would be requested, but it wouldn't be mandatory.

Mr. Jackson: So is that the problem, then? I'm hearing from Mr. Parsons that we don't even have a legal right to ask it.

Ms. Krakower: I can't speak to the legal right, but—

Ms. Yack: Under the bill, someone filing a no-contact notice would be asked to provide medical information. It wouldn't be mandatory, but they would be asked to provide it, and could provide it.

Ms. Churley: I would simply like to say again—I don't want to get hung up on this too long—that I would like it to be mandatory. Under the existing act right now, as you may well be aware, in order for people to get health information they have to be diagnosed with a disease, and frequently by then it's too late, if it's a serious disease, to do anything about it.

Of course, if somebody chooses under the new act to put in a contact veto, that is their right, but I don't believe that it should follow that it is their right, frankly, if they make that choice, to prevent their biological child, the adopted child, from getting health information that could literally save their life or help them make decisions about their having children or about preventive remedies for their children or whatever.

1640

I simply put this forward because it's such a huge issue now that I would have liked to see it strengthened. But I understand if the government doesn't want to proceed with that. I'm disappointed. Hopefully, we can make sure the form and the education that's done around it will make it as easy as possible; that people will be encouraged in every single way in terms of education and the way the form is written under the regulations and that sort of thing; that they understand the implications if they don't provide that information; and that because of the information we have today about the genetic revolution, it be strengthened to the extent possible.

Mr. Parsons: I don't believe I said that no one has a right to ask the question. Indeed, I believe it should be asked. I suspect that the vast majority of birth parents would willingly and freely give that information. But the amendment, as presented, says "shall include." So the question is, if a birth parent chose to not provide any of the information, what are the consequences? If there are no consequences, then it is misleading to say "shall" when in fact it may not happen. But certainly we are highly supportive of the questions being asked.

The Chair: Any further debate?

Mr. Jackson: What is the status of that point if this doesn't go through? Where do we have the assurances that all these questions are going to be presented? Is that in the bill somewhere else?

Mr. Parsons: It's currently in the bill.

Mr. Jackson: In which section?

Ms. Wynne: As the bill reads now, under the additional information section that Ms. Churley was amending, "The notice may include a brief statement concerning the person's reasons for not wishing to be contacted and a brief statement of any available information about the person's medical and family history." So it is not mandatory, but the provision is there.

Mr. Jackson: Why are we not enumerating it in the kind of detail that Ms. Churley has included? The way that's written, that can be a simple sentence that leaves four lines for people to fill in information. For those of us who've been sitting around constituency offices with government forms for the last 20 years, I can tell you that the largest single complaint is that it gets sent back because it wasn't answered properly.

I think this is a very good piece of work. If all we're apart on is whether it is prescriptive or voluntary—I'm just afraid that under your regulations, you're not going to capture some of these points. I can tell you this: For all of you who've filed for life insurance, it's hugely important in terms of your rating to determine at what ages your parents died and so on and so forth. Just on that alone, that faces every citizen when they want life insurance. This clearly states that, as opposed to the generally worded paragraph that's in the legislation. We won't see regulations for six months to a year, so there's no telling how this will be captured.

Mr. Parsons: The information that will come to the adoptee is not coming from a civil servant who is not emotionally involved in this. This is information that will come from the birth parent.

If we look at experience in other jurisdictions, and indeed if we look at birth parents here in Ontario who have been reunited with their adoptee, or not been reunited, I would suggest they're much more prone to want to pour out their heart. There is a joy and a relief at being able to share some of the information. In the vast, vast majority of cases, I don't expect that the birth parents will hold it back.

This amendment restricts it to certain things, where I think probably the other extreme will happen, and the birth parents will want to pour out all of the information they have.

The original bill does not restrict in any way, shape or form the information they can share and we do not wish to put restrictions on it.

Mr. Sterling: But your objection to this is that it's prescriptive. That's your objection; is that it?

Mr. Parsons: Our objection is that it appears to make something mandatory that in fact cannot be made mandatory.

Mr. Sterling: Why wouldn't we just change the word from "shall" to "may"?

Mr. Parsons: I would suggest that if you change it to "shall" then it isn't really that much different from the original part of the bill that just provides for the birth parent to share medical and family history.

Mr. Sterling: What section is that in?

Mr. Parsons: The section is 48.3(4).

Mr. Sterling: I just—

The Chair: Mr. Sterling, I am waiting. I'm just trying to see if anybody else wants to engage in this discussion. Mr. Sterling has the floor.

Mr. Parsons: I'm going to turn to staff. Do we have a form?

Ms. Krakower: We were looking at other jurisdictions for best practices in terms of forms and had looked at some quite good ones that we were thinking might be applicable in Ontario that went into incredible detail in terms of both the birth father's and the birth mother's side and went through absolutely every possible medical issue or situation you could imagine. That's the

type of information we'd be looking at the ORG providing to people and that would, I think, give people some ideas in terms of what they can actually provide. It would jog their memory about all sorts of detail in terms of their medical history and background.

Ms. Wynne: I guess the other thing is that in the bill, as it's written now, it's the person's medical and family history. There may be other things about the family that aren't medical but are still non-identifying that would be captured by a form. I think that's the other reason to leave it open, so that the detail can be inclusive.

The Chair: Any further debate? If there is none, then I will ask the question.

Mr. Jackson: Recorded vote.

The Chair: Shall the motion carry?

Ayes

Churley, Jackson.

Nays

Brownell, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: The amendment does not carry.

Shall section 7 carry? Those in favour?

Mr. Sterling: Just a minute.

The Chair: That's section 7. There are no amendments there.

Mr. Sterling: This is the no-contact section. Is that correct?

The Chair: Section 7. We dealt with page 19, which was refused, so the section stayed as it was. Can I take the vote, Mr. Sterling?

Mr. Sterling: Yes.

The Chair: OK. Thank you. I'm ready to take the vote. Those in favour—

Mr. Sterling: I want a debate on the—

The Chair: On section 7?

Mr. Sterling: Yes.

The Chair: OK. You have the floor.

Mr. Sterling: I just want to talk a little bit about why section 7 is so ineffectual in terms of protecting either party. I have heard other members on media talk about this particular section, saying to the public in general that this offers great comfort for one side or the other.

What this section doesn't do is deal with people who become aware of the information third-hand. So if a natural mother or an adoptee or a birth parent becomes aware of information and shares that information with third parties, there's nothing to prevent a third party from making the contact. Therefore, in addition to the other problems that I have with the no-contact section, which I believe in terms of the penalties is totally ineffectual, this is a real sham. The no-contact section is a real sham. Even in terms of the discussion we had over Ms. Churley's amendments, we were referring to probably other provincial legislation across Canada with regard to giving health information out, for instance. Of course, Alberta, BC and Newfoundland don't have a no-contact section; they have a non-disclosure veto. So in terms of the non-disclosure veto, we're comparing, to some degree, apples and oranges when we're talking about the health information that people should be giving forward.

1650

I think it needs to be understood by people that if someone receives that very, very private information about another individual, there's nothing in this legislation which prevents the receiver of that information from sharing it with the rest of the world. They can share it with their neighbours; they can share it with their husband; they can share it with other people perhaps within the family. We had examples of people who had been to the point of being harassed by other members of the extended family of a person who had received this information.

So the whole notion that if the natural mother or the adoptee does not want to be contacted, does not want to be reminded about the particular matter—all that has to be done in order to skirt the penalty sections of this legislation is for someone other than the receiver of the information to do that contact. If I as an adoptee received information about my natural mother and I shared that with a friend and said, "I can't understand why my natural mother would be a no-contact with me," and that friend phoned up the natural mother and said, "You're really a bad person for not wanting to meet with your son or daughter," there's nothing that can be done to protect the natural mother from that kind of a call.

This whole notion that the no-contact has any impact on trying to protect a person from carrying on as they have before is bogus—as well as the argument I made in the Legislature on this, which is, who's going to prosecute either their natural son or their natural mother for breaking the no-contact rule? I mean, if somebody goes to the trouble of registering a no-contact notice, are they going to invite a lengthy legal proceeding with someone they want nothing to do with?

The notion that this provides some kind of protection when a disclosure is undertaken is really bogus. As we all know, when Mr. Ruby was in front of the committee, he indicated that the experience, under the Criminal Code, with no-contact orders of judges is quite disappointing for people who have got these kinds of orders from our criminal courts, because the police, in general—this sort of goes to the back of their work in terms of what they're doing. If they're not concerned about a physical problem, the police, I can guarantee you, will not step in to these no-contact-order situations.

I believe that the section is quite useless in terms of what it does. It doesn't really provide any protection. The only protection that you can provide in terms of that is the disclosure veto, where the person has control of the information, because once that information gets out, they have lost control of that information. If it goes to one of the parties—a birth parent or an adoptee—they can share it with the world, they can share it with everybody in town or they can share it with whomever they like, without any kind of penalty.

The Chair: Is there any further debate on section 7?

Mr. Parsons: Yes. If I could give a response to part of Mr. Sterling's—

The Chair: Of course. You have the floor, Mr. Parsons.

Mr. Parsons: There are penalties provided for a birth parent or adoptee who violates, but there are also penalties provided for others. In section 10 of the bill, section 56.1 says:

"Other persons

"(3) No person shall contact or attempt to contact a birth parent on behalf of an adopted person if the adopted person is prohibited by subsection (1) from doing so.

"Same

"(4) No person shall contact or attempt to contact an adopted person on behalf of a birth parent if the birth parent is prohibited by subsection (2) from doing so."

The penalty that applies to them is the same penalty that applies to the adoptee or the birth parent. Is it legislation that would prevent someone from sharing this information with another person? No. I don't think that it's realistic to expect or to ask for that. I would suggest that finding out one is adopted and having access to the birth parent is probably something that they wish to talk to and get some support from others about. Indeed, we encourage counselling, where they believe it's appropriate.

The Chair: Any further debate on section 7?

Mr. Jackson: My view is slightly different. I've always felt that there's a responsibility on the birth parent to disclose all necessary medical information and other information as may be helpful, to the extent that they can protect and preserve their anonymity.

I was listening to CBC Radio last week when a woman got on the radio to discuss this bill and said, "Look, I came from a province where there was a no-contact provision." What her daughter did was to go systematically to every single member of her family, one by one, and create difficulties in their lives. This woman had to move, had to change her name, alienate herself from her family, from being monitored, change her phone number and so on. This was a very disturbing testimonial.

Although I understand what Mr. Parsons has brought our attention to in subsection (5), it doesn't address that woman's concern in terms of—and I'm wondering how we can arrange it so that the contact veto is for that individual and their immediate family members, however we wish to deal with that.

Nothing can prevent or stop somebody from taking an ad out in the paper or registering by mail to a group of friends. We can't build legislation to fix that or stop that. So let's not dwell on that.

However, I think that the practice of—again, this gets back to why I was so adamant about Ms. Churley's motion, because I feel that the full force of law should be in effect if the adoptee has received all the necessary medical information and all it is is their inability to repatriate with the birth parent, which apparently we're still upholding in this legislation by a no-contact veto. It's not nearly as strong as a disclosure veto.

So when we get to section 10, I would hope that we're going to deal with something along these lines that indicates that we don't—and I have several amendments here dealing with victims of sexual abuse not wishing to be contacted by a parent who would have sexually assaulted their child. I want to make sure that there are further protections around the family so these young women who were raped by their fathers have the right not to be harassed by the father. Again, when we get to those amendments—I have some cases that still trouble me to this day. We should be in a position to protect those young women. So it goes both ways.

1700

I'm not as satisfied and comforted as the government would seem to be with some of the motions as they are currently before us, but I would hope that we will amend section 10 as well to try to attempt to minimize the kind of conduct that Mr. Sterling has expressed concern about. There are those out there whose lives have been nearly destroyed by it.

The Chair: Is there any further debate on section 7? I will now put the question. Shall section 7 carry? Those in favour? Those opposed? The section carries.

Section 8.

Mr. Sterling: Are these recorded votes?

The Chair: No, only if you ask, Mr. Sterling. If you want me to do a recorded vote, I will be happy to do that.

Section 8, page 20.

Mr. Jackson: I move that section 48.4 of the bill be amended by adding the following subsection before subsection 48.4(1):

"Application

"(0.1) This section applies with respect to adoptions that come into effect on or after the date on which section 6 of the Adoption Information Disclosure Act, 2005 came into effect."

The Chair: Any comments? Any debate?

Mr. Sterling: Basically, this couples with the no-disclosure part of it, but says that, going forward, we have a much more open system when people are aware of the rules when they make arrangements for an adoption to take place. This includes the whole argument about retroactive legislation.

We have certain principles and fundamentals in our legal system and one of them is dealing with the rules of natural law. The rules of natural law are that you and I as citizens can rely upon the legislation of the day in order to determine what our actions are going to be. We make determinations about what we are going to do or what we're not going to do on what the rules are as of that day. The problem with going back as far as 30, 40 or 50 years in this legislation with regard to just a blanket opening of the adoption records—which this legislation, I would make the argument, does—is, why would people have faith in our legal system if legislators 20 or 30 years from now can change the rules around what would be perhaps the most significant protection that we had sought from the government?

We heard the privacy commissioner talk about the fact that there is no question that people were told they had this protection, that the government protected them. In fact, I got a letter from a natural mother today who said that not only was this protection told to her by people who were dealing with her but she was told in the court by a judge that she had this kind of protection in terms of privacy.

The whole aspect of law and the importance in law is that when you start fooling with retroactivity and changing the law of 20, 30 or 40 years ago, what you're saying to the people is, "You can't trust the law. You can't trust the system. You can't trust what the laws are today in terms of your actions." It creates a mistrust in us, in the Legislature, in terms of what we're doing. If you can't rely on what the law is telling you and what government officials are telling you and what the registrar is doing in terms of sealing records, then how can you trust what the laws of today are?

That's the notion of this particular amendment, coupled with the other amendments that we have put forward, which implement a disclosure veto. This amendment was drafted by legal counsel and follows the wishes of Ms. Cavoukian, our privacy commissioner. Therefore, I would argue that if you accept the disclosure veto, we say to people who are involved in this, it's a very open system going forward. Going back, you have the veto, but going forward, you don't have those same kinds of protections that we owe you, our citizens of the past, in this matter. That's what this particular amendment is about.

Ms. Churley: Briefly, in rebuttal to that: I speak, very clearly, as a birth mother who relinquished a child, and also as a former Registrar General of this province, as Mr. Sterling was as well. So I not only had personal experience, but I also know the law around this from both angles. I know what I was told and I also know the legalities around the contracts signed. I can absolutely assure you, speaking now as the former Registrar General, that there's nothing in the law that provides for the things that Mr. Sterling is talking about around confidentiality.

Speaking as a birth mother, and speaking to a lot of other birth mothers on the other side of this issue, I can tell you that many of us were told the exact opposite. It was mostly verbal; I'm surprised to hear that any judge would have said any such thing, because he didn't have the jurisdiction to do so under the law. I was told that it would be made easy for me to find my child when he reached adulthood, and for him to find me, quite the opposite of what some other mothers believe—a minority, actually, because most of us want to find our children.

We were told different things, which is one of the problems we're having to deal with here. There's nothing in law; there's nothing on the forms that we signed or saw. It's all dependent, on the whole, on what some social worker told us at the time. That's really important to remember: that some of us felt very let down when we were told we would be helped to find our children and found that, on the contrary, we weren't; there was no help there.

The other thing I want to talk about is retroactive legislation. That is what this is all about. Nobody's saying otherwise, Mr. Sterling, as you know. If it weren't retroactive, we wouldn't need it, because adoptions today are open in various ways. Retroactive legislation is permitted in many jurisdictions when it's remedial in nature, for human rights issues and others. I can cite examples: the Indian Act, in terms of how it used to deal with female First Nations, is a very good example. When it's remedial in action and deals with wrongs that were done, which at the time were deemed appropriate, it is not uncommon.

I guess I'll close with this. There's so much to say, and we'll get into it a little later. That is the crux of the argument that the privacy commissioner is making. By the way, adoption and this whole area is not under her jurisdiction. I have no problem with her making statements about it, if she's got definite views, but she wrote a letter to me saying, "I have no jurisdiction in this area. Let me give you my opinion, but at the end of the day, it's up to the government to make these decisions, because it's a complex issue."

In closing, I would say that if you look back through history books, I think it was 1979 when Ross McClellan, a former New Democrat member here, brought forward—were you here then, Norm?

Mr. Sterling: Yes.

Ms. Churley: —brought forward the first disclosure—I know you were, Cam. Weren't you?

Mr. Jackson: Not in 1979.

Ms. Churley: —the first disclosure registry in North America. We were first then, and we're lagging way behind. The same objections and fears were raised then that we're hearing now about this, and it didn't happen. I understand that people have some of these concerns, especially when you get letters, as you do. I'd like to share with you—but there's no time now—the hundreds of e-mails and letters that I've received from the other side of this. There's no doubt that this is a wrenching and heartbreaking and deeply personal situation for mothers when they have to give up their children, and it's deeply heart-wrenching and personal when we try to find each other and hit roadblock after roadblock.

1710

It's not as though we're reinventing the wheel here, Norm. If you look at England, they've had this legislation without a disclosure veto for 20 years, and these kinds of things the privacy commissioner is talking about and you're talking about have not happened, as well as in New South Wales, even though the privacy commissioner cited an old study instead of the most recent study that shows—and there's no disclosure veto—the contact veto is working; in fact, it expressed surprise at how well it's working. So we need to update ourselves in terms of looking at existing legislation, not just within Canada but in jurisdictions that have had it a lot longer than we have. There's a lot to learn.

I'll speak a little bit more to these issues as we get more into detail about this, but there is all kinds of evidence in other jurisdictions that show that this kind of legislation works and that the kinds of concerns—I respect those concerns—being raised have not happened.

Mr. Parsons: The issue of retroactivity is the cornerstone of this bill. Don't think I haven't struggled over the years with the approach to it, because in general I do not support retroactivity, but retroactivity is appropriate when it undoes an injustice. Norm referred to natural law, and that it is not natural law to make it retroactive, but it's not natural law to not know one's parents or one's child. Natural law says that they know. Adoptees didn't choose to have a non-disclosure veto; they weren't part of it.

I firmly believe there were some individuals who were promised that their name would not be given out. There was no law basis for it. It was what was said at the time, because our children's aid societies exist to protect children and to find homes for children. But it was said in a different era. I can recall when girls in my class at high school would disappear for eight or nine months to live with an aunt and help them with something, and then would reappear, because the pressure at that time was that it was not socially acceptable. There was no expectation that the birth mother would want to see her child again. That was the belief at that time. I don't know how a birth mother who has given up her child feels, but as this committee knows, we lost our son last year. I think about him every minute of every day, and I think I have some sense of a birth mother's feelings that her child is somewhere. If we have a veto, then this law really doesn't take effect for 30 or 40 or 50 years. I'm supporting the bill as it's presented because I believe there is so much more good that will come of it. No law is perfect, but I believe the natural thing is for there to be contact between a child and their parent. I support the bill as it's presented.

Mr. Sterling: In response, I would just say to Ms. Churley that I understand her advocacy and I understand that there are many, many happy reunions and that they're very important to a lot of people. But we are going to become the jurisdiction that cares less about privacy rights than any other jurisdiction in our country. Alberta, BC and Newfoundland have a non-disclosure veto in their bills, and they know that only 3% to 5% of people take advantage of that. To me, with 250,000 files, as I understand there are—we could be affecting as many as a million people—there are a lot of different cases out there, and if only 3% to 5% of the people take up the veto, then many, many, 95%, of those reunions can go ahead if people want them to go ahead.

But there are people, a significant minority of people, who have written to me and to the privacy commissioner and said that this is going to be catastrophic for them and for their families. So why wouldn't we try to have a law where you would allow a disclosure veto like the only other jurisdictions that have opened up their records as we're proposing to do? Why wouldn't we do that? I don't understand the logic of not going there.

I must say as well to Ms. Churley that Dr. Cavoukian—she's a doctor of laws as well—expressed very clearly and well the reliance on the government to keep these records sealed and confidential. That was the understanding. The argument whether there was a law that said this and a law that said that doesn't matter. The confidence was, for those people who want to rely on that confidence, that they were told this was the case, and the government has carried on that way for 70 years. Now we're changing where we were; we're changing it to something else. So it is a retroactive and retrospective law that we're making here.

Those are the arguments that I am putting forward, that we can address the great bulk of adoptees and natural mothers who want to contact their mother or their father or their child, but by having a disclosure veto, we would allow for those people who have very personal reasons for not wanting to change their lives at this point in time, either for purposes of not dredging up very painful memories or for present family circumstances. We've heard about a lot of those. I really don't understand why this has to be the case.

The other part is, you talk about rights. Well, one person's rights are another person's wrongs. I think we had the Canadian privacy commissioner say that notwithstanding the rights that have been defined in this matter by the UN, you can't state that somebody has said that somebody has a right to do this without considering the offsetting rights of other people involved in the situation.

So this amendment is put forward, along with the disclosure veto. I would suggest it might be stood down until we consider my amendment with regard to the disclosure veto.

The Chair: I recognize that Ms.Churley wants to speak on the matter. Do you want to hear her comments before we deal with your request to stand down?

Mr. Sterling: Well, whatever.

1720

Ms. Churley: I don't want to stand down the amendment. We keep standing these things down. I know Mr. Sterling has held this opinion for a long time, and nothing's going to change his mind; I've discovered that. But I want to correct, in my view and in other people's view, since we seem to be discussing the crux of this issue for many of us here right now—first of all, this is not about reunion. Some are happy; some aren't. Some don't happen. Some people deny contact, and people have to deal with that, and we hear about it at these committees. I hear about it all the time. But what people say is, at least they know. So that's number one.

Yes, we're saying that any birth mother and adoptee has the right not to be contacted. That's in the legislation. This is about everybody, no matter what the circumstances of their birth, having the right, as we all take it for granted, to our own personal birth information, and to make choices, even if it's a small minority. They've done it in three jurisdictions and all the privacy commissioners have talked together and I recognize all of that, and they have their reasons, but again I come back to other

jurisdictions that didn't make those mistakes. What we found here in Canada in the jurisdictions that have done it is that it has caused confusion and hardship, and despite what they said about the ability for adoptees to get medical information, it's difficult to get, and there will be more court cases over it and eventually it will be changed.

Let's be leaders here. Let's take the high road, as they have in other jurisdictions. This legislation isn't setting up a two-tier system. Even if it's a small minority, because of the circumstances of their birth—that's what's being said here—let's further victimize them. So this person is not allowed as an adult to get their information about who they are and their birth certificate, which you have and I have, because of the circumstances of their birth, which they had no say in, no choice. What it would be doing is discriminating against them, to say you can't have it. But it is important. Not all the adoption community supports the contact veto. Some say that in a perfect world we should be able to contact whoever we want, but it is in there and that's why it's there, to protect people. When you're bringing in legislation to remedy a problem, to continue to deny a small sector that information is wrong and further discriminates.

So let's bear in mind that it's not about reunions; it's about adult adoptees, all of them, being allowed to have access to their personal information.

Mr. Sterling: I've got to respond. Basically it's not just about that issue, it's about privacy and confidential information. It is about people who have been told by the government of Ontario that their information will be kept confidential. We, in this legislation, are saying to all those people who have been told that, and there have been tens of thousands of people who have been told that, that we are breaking that word the government has given to them. And for what? To protect 3% to 5% of people who might have another right—I agree there could be a conflicting right, but we've heard of examples: incest, rape, abuse of children. Do we think that we should force these people to appear in front of a board, to say to a board of people they have no knowledge of, "I deserve a contact veto because of these particular circumstances"? Or do we not say to these people who have suffered very tragic circumstances, "We guaranteed you privacy, and if you implement a contact veto," and we know 3% to 5% of the people will do that, "then the information we said would be kept in confidence will continue to be kept in confidence"?

That's the argument I'm making, and to do what Alberta, BC and Newfoundland did. There are very few jurisdictions we know about in terms of wide open records, and we have heard about a significant minority of people in New South Wales who have suffered as a result of legislation which is very similar to the legislation which is being put forward here today.

The Chair: Thank you. Any further debate on that section? If there is none, I will ask for a vote on section 8, page 20. Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

Would staff like to make any comment on the next section? It's 48.4 and 48.4.3.

Ms. Hopkins: I'd like to let the members know that there's a typographical error in the motion numbered 21. If you flip ahead to page 21b and look at section 48.4.2(1) about halfway down the page, the heading on the provision is "Order preventing disclosure to adopted person (to protect a birth parent)."

Ms. Churley: Where are you again?

Ms. Hopkins: At 48.4.2(1). At the end of that section, the words "to the adopted person" shouldn't be there. Just cross them out.

The Chair: OK, "to the adopted person." Mr. Parsons, would you like to introduce the amendment, please?

Mr. Parsons: People may wish to go for a coffee or for dinner, and return. I will commence to read it, with some assistance from Ms. Wynne.

I move that section 8 of the bill be struck out and the following substituted:

"8. The act is amended by adding the following sections:

"Order prohibiting disclosure to birth parent (to protect an adopted person)

"48.4(1) An adopted person who is at least 18 years old may apply, in accordance with the regulations, to the Child and Family Services Review Board for an order directing the registrar general not to give a birth parent the information described in subsection 48.2(1) about the adopted person.

"Same

"(2) If the adopted person is incapable, a person acting on his or her behalf may apply for the order, and the issue of the adopted person's capacity shall be determined in accordance with the regulations and using such criteria as may be prescribed.

"Notice of application

"(3) The board shall give written notice of the application to the registrar general in accordance with the regulations.

"Procedural matters

"(4) The Statutory Powers Procedure Act does not apply with respect to the application, and the board shall decide the application in the absence of the public.

"Request from birth parent

"(5) If, while the application is pending, the registrar general refuses under subsection 48.2(6) to give a birth parent the information described in subsection 48.2(1) about the adopted person, the birth parent may request an opportunity to be heard in connection with the application.

"Same

"(6) The board shall take such steps as may be prescribed in order to ensure that the birth parent has an opportunity to be heard, but no person is entitled to be present during, to have access to or to comment on representations made to the board by any other person.

"Order

"(7) The board shall make the order if the board is satisfied that, because of exceptional circumstances, the

order is appropriate in order to prevent significant harm to the adopted person.

"Notice of order, etc.

"(8) The board shall give a certified copy of the order, if any, or such other information as may be prescribed to the registrar general.

"Expiry of order

"(9) The order expires when the registrar general receives notice, and evidence satisfactory to the registrar general, of the death of the adopted person and the registrar general matches the notice with the original registration, if any, of the adopted person's birth or, if there is no original registration, matches it with the registered adoption order."

Ms. Wynne: "Finality of order, etc.

"(10) An order or decision of the board under this section is not subject to appeal or review by any court.

"Confidentiality of board records

"(11) The board file respecting an application shall be sealed and is not open for inspection by any person.

"Administration

"(12) Subsections 2(2) to (4) do not apply to notices, certified copies and other information given to the registrar general under this section in connection with an application.

"Order prohibiting disclosure to birth parent (to protect an adopted person's sibling)

"48.4.1(1) In this section,

"'sibling' means, in relation to an adopted person, a sibling,

"(a) who is a child of the adopted person's adoptive parent, and

"(b) who, before becoming a child of the adoptive parent, was a child of the adopted person's birth parent.

"Application for order

"(2) If an adopted person who is at least 18 years old has a sibling who is less than 18 years old, an adoptive parent of the adopted person may apply, in accordance with the regulations, to the Child and Family Services Review Board for an order directing the registrar general not to give a birth parent the information described in subsection 48.2(1) with respect to the adopted person.

"Order

"(3) The board shall make the order if the board is satisfied that, because of exceptional circumstances, the order is appropriate in order to prevent significant harm to the adopted person's sibling.

"Expiry of order

"(4) The order expires when the adopted person's sibling reaches 19 years of age.

"Procedural matters, etc.

"(5) Subsections 48.4(3) to (6), (8) and (10) to (12) apply, with necessary modifications, with respect to the application.

"Order prohibiting disclosure to adopted person (to protect a birth parent)

"48.4.2(1) A birth parent may apply, in accordance with the regulations, to the Child and Family Services Review Board for an order directing the registrar general not to give the adopted person the uncertified copies of registered documents described in subsection 48.1(1)

"Request from adopted person

"(2) If, while the application is pending, the registrar general refuses under subsection 48.1(6) to give the adopted person the uncertified copies of documents described in subsection 48.1(1), the adopted person may request an opportunity to be heard in connection with the application.

"Order

"(3) The board shall make the order if the board is satisfied that, because of exceptional circumstances, the order is appropriate in order to prevent significant harm to the birth parent.

"Expiry of order

"(4) The order expires when the registrar general receives notice, and evidence satisfactory to the registrar general, of the death of the birth parent and the registrar general matches the notice with the original registration, if any, of the adopted person's birth or, if there is no original registration, matches it with the registered adoption order.

"Procedural matters, etc.

"(5) Subsections 48.4(3), (4), (6), (8) and (10) to (12) apply, with necessary modifications, with respect to the application.

"Reconsideration of orders prohibiting disclosure

"Order to protect an adopted person

"48.4.3(1) The following persons may apply, in accordance with the regulations, to the Child and Family Services Review Board to reconsider an order made under section 48.4:

"1. The adopted person.

"2. If the adopted person is incapable, a person acting on his or her behalf.

"3. A birth parent who, by virtue of subsection 48.2(7), is not given the information described in subsection 48.2(1) about the adopted person.

"Order to protect an adopted person's sibling

"(2) The following persons may apply, in accordance with the regulations, to the board to reconsider an order made under section 48.4.1:

"1. An adoptive parent of the adopted person.

"2. A birth parent who, by virtue of subsection 48.2(7), is not given the information described in subsection 48.2(1) about the adopted person.

"Order to protect a birth parent

"(3) The following persons may apply, in accordance with the regulations, to the board to reconsider an order made under section 48.4.2:

"1. The birth parent.

"2. An adopted person who, by virtue of subsection 48.1(7), is not given the uncertified copies of registered documents described in subsection 48.1(1).

"3. If the adopted person described in paragraph 2 is incapable, a person acting on his or her behalf.

"Procedural matters

"(4) The Statutory Powers Procedure Act does not apply with respect to the application, and the board shall decide the application in the absence of the public.

"Same

"(5) The board shall take such steps as may be prescribed in order to ensure that the interested persons have an opportunity to be heard in connection with the application, but no person is entitled to be present during, to have access to or to comment on representations made to the board by any other person.

"Incapacity

"(6) If a person acting on behalf of an incapable adopted person applies for reconsideration of an order, the issue of the adopted person's capacity shall be determined in accordance with the regulations and using such criteria as may be prescribed.

"Decision

"(7) The board may confirm the order or rescind it, and subsection 48.4(7), 48.4.1(3) or 48.4.2(3), as the case may be, applies in the circumstances.

"Notice of rescission

"(8) If the board rescinds the order, the board shall give written notice to the registrar general in accordance with the regulations.

"Finality, etc.

"(9) Subsections 48.4(10) to (12) apply, with necessary modifications, with respect to the application."

The Chair: Any comments?

Mr. Parsons: This is a very long amendment, but the crux of it is that as the bill, as it was initially tabled, provided the opportunity for an adoptee to have a non-disclosure with the requirement that they have to convince a panel or board of it, this essentially provides equal rights to a birth parent who may wish to have non-disclosure. Based on experiences in other jurisdictions, it is doubtful if it will be used very often, but it does provide an opportunity to both parties to have the equal non-disclosure exercised.

The Chair: Is there any debate?

Mr. Sterling: I understand that this was offered to the privacy commissioner originally, and I think she would be receptive to making it go both ways in terms of both the adoptee and the birth parent. However, the problem that you face here is the test of why somebody who is told that their information is confidential should have to convince somebody why their information should not now be disclosed. You're going to have a situation where somebody is going to walk in and say, "I was told that this information was going to be locked up forever. Now I have to come in and convince you that it shouldn't be disclosed."

The whole matter of privacy—I quote Ms. Cavoukian's press release of today, which is, quite frankly, only based upon the Toronto Star article. She had not received, as I understand it, the amendments, which we only received at 1:30 today. But she said, "Privacy relates to one's ability to control the use and disclosure of your personal information. It's all about freedom of choice—making your own decisions about disclosing your personal information—not having to convince someone else as to why they should be protecting it for you." She also states, "The fundamental privacy rights of birth parents and adoptees who don't wish to have their personal information disclosed must be protected—they should not have to convince anyone of anything, let alone have to demonstrate harm.... The government amendment does not satisfy the real concern of most birth parents and adoptees. The amendment I have suggested is not harm based. It is a veto based on fundamental privacy rights—rights that were promised by the government."

I guess in some aspects this is a small improvement in the situation of the old bill. It really doesn't meet the fundamental test that is there, that people were promised privacy. As I said, privacy is about controlling your own record, controlling the information about you, and we all know that this is very sensitive information. As I go back, this is a complete affront to the faith that these people had in their government to protect their most personal information.

The Chair: Is there any further debate?

Mr. Jackson: I have an amendment drafted for crown wards, and particularly it's designed—I'm just trying to navigate through this amendment, which apparently covers all adoptees, which is in effect giving them an opportunity to go before a board and give reason that they can have a non-disclosure—correct? My amendment goes slightly further, because it says it's an automatic veto, without question, until the adoptee becomes 19, and then they can advise if they wish to have their records disclosed.

My first question is, is my amendment in any way adversely affected by the passage of this section? That's a legal question.

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The Chair: Ms. Hopkins, can you answer the question, please?

Ms. Hopkins: The motion before the committee now provides for an order to be made and establishes a threshold for the order. I understand that the motion you may be moving relating to crown wards doesn't deal with orders. It would establish—

Mr. Jackson: An unfettered right.

Ms. Hopkins: Just a complete block to disclosure.

Mr. Jackson: Yes.

Ms. Hopkins: So your amendment could live with this proposal. It's not affected by it.

Mr. Jackson: Thank you.

My next question then, Mr. Chairman, is the reconsideration of orders prohibiting a disclosure order to protect an adopted person. If I'm reading this correctly, there's already been an order from the Child and Family Services Review Board saying that there be no disclosure. What circumstances am I to imagine would be the reasons why this matter would be reopened? If somebody could help me with the thinking and the logic of this.

Ms. Yack: There are a couple of situations. It could be that the birth parent obtained the order and then changed

her mind and wanted to have it rescinded; likewise for an adopted person. The bill is also structured that, for example, if the adopted person obtained the order and the birth parent went to the registrar general asking for information and was told they couldn't have the information because the order was there, the birth parent would be able to ask for a reconsideration of the order.

Mr. Jackson: The birth parent could ask for a reconsideration because it has come to their attention that their child has refused disclosure?

Ms. Yack: Has obtained an order prohibiting disclosure.

Mr. Jackson: So how real is it if you've got a right to appeal it?

Ms. Yack: You can obtain the order, and then, if there's reconsideration, both the birth parent and the adopted person would have an opportunity to be heard.

Mr. Jackson: OK. So after the adoptee says, "I don't wish to be disclosed," they've gone to the review board as someone who's no longer a minor and they have already won, in effect, their case to say non-disclosure, then some months or a year later, they find out that that's not good enough for the birth parent and they are now causing you to come back into a review situation. Is that correct?

Ms. Yack: The bill gives the authority to the birth parent to ask for reconsideration, yes.

Mr. Jackson: Has this been tried anywhere else? Where did you get the draft for this?

Ms. Yack: I don't know of another jurisdiction that has this provision.

Mr. Jackson: So how far does this deviate from the models in Alberta and Newfoundland?

Ms. Yack: They have disclosure vetoes.

Mr. Jackson: Right. Well, this is a disclosure veto as well; correct? It's just it puts it in the hands of a third party and then there's a dual appeal mechanism.

Ms. Yack: It has the effect of preventing disclosure, if the order is made.

Mr. Jackson: Until you go to appeal.

Ms. Yack: It's not a right of appeal, but if it's reconsidered and then the board changes the order on the reconsideration.

Mr. Jackson: So no one else has done this, to your knowledge?

Ms. Yack: Not to my knowledge.

Mr. Jackson: I sure would like to see the regulations that come out of this section.

You indicate the Statutory Powers Procedure Act does not apply. So then in what legal framework would the conduct of the review board be held?

Ms. Yack: It says the Statutory Powers Procedure Act does not apply because, although the Statutory Powers Procedure Act allows for a written type of hearing, it provides that both parties would have the other's submissions, and of course that would destroy keeping the confidentiality. Exactly how the process would be, I can't say. It does say that the parties would have an opportunity to be heard. Whether that would be by written submission—that's a possibility.

Mr. Jackson: Fair enough, but will we have the right for the person making application to appear before the board?

Ms. Yack: To appear in person?

Mr. Jackson: Yes.

Ms. Yack: The bill doesn't specifically say whether they'd be appearing in person or providing something in writing.

Mr. Jackson: I'm really having a hard time with that. I want to try to make this thing work, but I'm really nervous about the average 19-year-old getting sufficient legal advice to protect themselves. I'm thinking about my amendment, which I'm quite sure the government is going to defeat, to protect incest survivors and so on. These are victims. They are victims the rest of their lives. There should be some principles for their protection, and their inability to have a voice is of concern to me.

Part of the problem is that I only saw this two hours ago, so I'm trying to wrap my mind around it. I do know that the Statutory Powers Procedure Act provides fairness principles, but I understand why we can't—I guess the privacy commissioner has been unable to comment on these amendments?

Ms. Yack: No.

Mr. Jackson: And yet the minister was quite candid about the importance of her seeing them when she tabled the bill.

I can only note, for the record, my concern. The worst legislation is legislation that on the face of it says one thing, but in practicality does something opposite. That is my worry here. I support retroactivity, but I support some protections. This attempts to add them, but I am a little nervous about the turnstile approach to people's rights here: depending on who goes through it at what time.

I don't think I'm going to get any more answers, but I thank counsel for the ones she gave me.

The Chair: There are two other people who wish to speak: Mr. Parsons, and then I'll go back to Mr. Sterling.

Mr. Parsons: The older I get, the more I realize how complex life is. This is a complex issue. I've been around children's aid societies as a board member, foster parent and an adoptive parent since 1976, and I believe that I've probably put more emotions into this bill than into any bill that we've debated, with the exception of one bill.

I can understand and appreciate the argument of the birth parent having the right to block information, but at the same time, we have fostered 40-some children over the years, many of them children who have had indescribable things done to them that I could not share with this committee, even as non-identifying. You would not believe what had happened.

Some of them are now adults. Do they have the right to know? Yes, I think they do. Mr. Sterling talked very eloquently about the right of the birth parent. There's also the right of the child. If you have a right to contain, control and not let out your information, do you not have

the same right to get all the information that exists about you? Which is more compelling? There's the rub.

I've concluded that the adoptee's rights to access the information are very significant to me. When our oldest son was born, in the labour room was a girl of 13 having a baby. The attitude from the adults who came in with her was that it was a little problem, and they had to solve her little problem. The solution was to place it for adoption, and this girl had no say in it. It was a very paternalistic, maternalistic attitude: "We're going to look after it." This wasn't her little problem; this was her child. It turned out this was her daughter. Certainly, there were expectations at that time: "We've solved the problem for you. You don't have to worry about it. It's looked after." Well, for her, it wasn't a little problem; for her, she has a daughter somewhere.

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I believe there may even be people who believe they don't want contact with their child, and this bill will give them pause to think about that and to reconsider, and to reconsider it in light of today's environment and attitudes. I strongly support the approach now, that the adoptee has the right. I just believe there will be so much more good come of this bill.

The contacts are taking place now, with great difficulty, very unstructured and very haphazard. Whether this bill is passed or not, people will continue to seek out the other party. This bill provides some process for it, and I think recognizes both parties' rights to the best compromise possible. I have to support this section.

The Chair: Thank you, Mr. Parsons. Mr. Sterling, and then Mr. Jackson.

Mr. Sterling: The big problem here is that you're creating a very difficult structure to make a decision. Are you going to accomplish anything more with this section than you would by just giving a non-disclosure veto to some of the kids Mr. Jackson is talking about? Basically what you're saying is that you're going to set up a board that's going to hold a hearing, in secret, with one party in front of them. In the decisions this board will come out with, the test they're going to put forward is, "The board shall make the order if the board is satisfied that, because of exceptional circumstances, the order is appropriate in order to prevent significant harm to the adopted person's sibling." And then the other order is "significant harm to the birth parent."

It's going to be totally subjective. It just depends on the luck of the draw who you walk in and see in that closed room, where there's not going to be any record of the proceedings. There may be some record of the proceedings, but they will be sealed. The other side, which won't know this is going on, might have another argument. You're getting into circumstances where you're going to miss some people who probably should be protected by the CAS, at least until they're old enough to take care of themselves. As Mr. Jackson points out, how capable is a 19-year-old of taking care of himself or herself in terms of learning what the procedures are and taking action? Are they likely to take action?

You're making a very difficult process here. I understand why you don't have the Statutory Powers Procedure Act, because then people would appeal it to the divisional court, or what used to be the divisional court on the administrative procedure that was going on. So it's going to be a very subjective procedure. You're going to get one decision out of this group. You may walk into another group of board members and get a very different opinion in terms of what comes out.

I don't understand why you're going through all this when three other provinces have what I think is a much more implementable disclosure veto to protect the kind of people Mr. Jackson is talking about. Mr. Parsons—I have so much respect for him and his wife, who have taken care of so many young children—understands, probably better than any of us sitting around this table, about kids who have been ill-treated by their parents and those kinds of things. I don't understand why you're going to all of this trouble to set up a procedure which in all likelihood will fail in giving good decisions because of the structure that you're setting up, rather than just going the simple, implementable way of saying 3% to 5% of the people are going to choose this particular option. Most of them are going to choose the option for good reason, where they had traumatic experiences or they want to protect their child in the long run. I don't know, but it just seems to be impractical.

Mr. Jackson: I'm a little concerned that the simple words "significant harm," which are not identified in the legislation—there's not a section to determine what "harm" constitutes, so it needs further clarification.

I raised a question with the minister on the floor of the Legislature some weeks ago, which she dismissed out of hand, saying that it was inappropriate. However, I notice that she has now responded in the newspaper to the very same question I raised, and I want to quote this for the record: "Pupatello said she is concerned that there may be cultures in Ontario that believe in 'honour killings' to seek retribution for children born out of wedlock." She goes on to indicate that she has been thinking about this for some time and that it could happen here in Ontario.

I cross-reference that statement in the paper because we haven't heard from the minister other than in the media. I want to make sure we're not passing a motion that, by the minister's definition, means that they are threatened for life and limb only. I want to propose an amendment that would amend 48.4(7) to add the words "physical or emotional" before the word "harm," and the same amendment to 48.4.1(3), again, "to prevent significant physical or emotional harm." I think those are the only two spots that it occurs, unless I'm missing the other section.

The Chair: Mr. Jackson, did you write this amendment for us?

Mr. Jackson: No, I didn't.

The Chair: I believe we need it in writing.

Mr. Jackson: I know we need it in writing, but I don't want to have a recess while I write it out. Can I serve notice? I'll have it written for when we come back.

Maybe this is a good question for the parliamentary assistant. Oh, there it is. I found it: "of the birth parent."

In my many years in this place, I've come up with a lot of very trying cases: cases of incest, sexual assault and no-contact in our courts. Barring contact between a father who is sexually assaulting a sibling is perhaps one of the most disturbing of all. I know how poorly the current orders in our courts are being handled in terms of preventing access, so I'm loath to consider, without some added definition here, the notion that a board is simply looking at whether or not someone's life is being threatened. For women, who are the disproportionate number of cases—that's not to say there isn't sexual abuse of boys, but the disproportionate number, unfortunately, is of young girls and, I'm sorry to say, cases that I'm aware of where even crown wards, who are in the care of children's aid and foster parents, have been sexually assaulted. We know of those cases as well.

Again, I preface this with my worry that the government members are not going to support protection for this unique class of victims in our province, whose adoption is a function of child protection issues and not of the other circumstances that have been well documented around this table.

I wish to give notice that I will get that in writing, but I certainly want to make sure that the range for consideration is broadly based and not narrowly defined by the minister's concern about honour killings by people seeking retribution for children born out of wedlock, which she believes could happen in this province.

The Chair: Ms. Churley, something short?

Ms. Churley: Yes, something very short, just speaking to this. I'm not going to support this amendment, because I've made my views clear on how I feel about disclosure vetoes. But I'll also say—I'm sure we'll be discussing this later—that one of the things that we're not looking at is the other side to this. If there is even this reduced remedy for a disclosure veto from the birth parent, what's not been talked about is the ability for an adult adoptee who has had a disclosure veto slapped on them to be able to appeal, go to some tribunal and make the case that they're suffering extreme emotional damage or physical harm from illnesses through not getting the information. There's a lot of focus on one side, but not, I keep pointing out, on the other side.

We had deputants—some of them are here today—who talked about the extreme harm that they have suffered because they haven't been able to get information, and nobody is talking about that. It's critical that we address that as well, if we're going to be talking about remedies for people who don't want the information disclosed. There are no remedies for those who have that disclosure veto slapped on them, and they can't get the information that will help them.

The Chair: It is 6, and there's also a notice for an amendment which Mr. Jackson will provide to us tomorrow—it's already here. We'll recess until tomorrow at the same time, 3:30 or 4, whatever the proper time is. I thank you for your contributions to today's events. We'll see you again tomorrow. Thank you to all of you, including our guests.

The committee adjourned at 1804.

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