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Mardi 31 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
Clerk: Anne Stokes

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 31 May 2005

Mardi 31 mai 2005

The committee met at 1601 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): May I suggest that we move to section 9 until Mr. Jackson comes back and then we'll go back to where we were. Would that be OK with everybody?

Section 9, page 23: Would someone move the motion, please. Mr. Parsons, do you want to introduce page 23, please?

Mr. Ernie Parsons (Prince Edward–Hastings): I move that section 48.5 of the Vital Statistics Act, as set out in section 9 of the bill, be amended by striking out "sections 48.1 to 48.4" and substituting "48.1 to 48.4.3."

The Chair: Mr. Parsons, I'm sorry. I'm advised that this section is related to another one which we haven't addressed, so we can't deal with this one. Let me go back to Mr. Sterling.

Mr. Sterling, I understand page 22 is your amendment, which is section 48.4.1. Would you introduce it now, please.

Mr. Norman W. Sterling (Lanark–Carleton): No, I won't. Basically, the problem is that we haven't talked about the amendment dealing with the disclosure veto and this talks about advertising the disclosure veto. It's hard to put forward something when we haven't determined the other issue.

The Chair: Then let me go to the next section—

Ms. Marilyn Churley (Toronto–Danforth): On a point of order, Mr. Chair: Could we have somebody go and try to track down Mr. Jackson?

The Clerk of the Committee (Ms. Anne Stokes): He's on his way.

Ms. Churley: OK. That might be helpful.

The Chair: We will wait until Mr. Jackson comes.

The committee recessed from 1604 to 1605.

The Chair: We will resume dealing with Bill 183. Yesterday we were discussing the amendment to the amendment on section 8, page 21e. Mr. Jackson is the one who introduced it. Perhaps you could read it for the record, Mr. Jackson, whenever you're ready. It's 21e.

Mr. Cameron Jackson (Burlington): I move that subsections 48.4(7), 48.4.1(3) and 48.4.2(3) of the act, as set out in government motion 21, be amended by striking out "significant harm" wherever it appears and substituting in each case "significant physical or emotional harm."

The Chair: Any comments?

Mr. Jackson: It's clear on the face of it. There is concern that "harm" can mean many things, and I'm not comfortable leaving that to the vagaries of regulations. I want to have as large a definition as possible, particularly for women, who I think are offended by parts of this bill that, in the case of victims of rape, incest, sexual assault or physical abuse, require them to retell that story before a panel. I find that offensive; in fact, as I raised in the House today, it probably offends the Victims' Bill of Rights, which entrenches the principle that a person should not have to go before a tribunal to prove they have been victimized. The inclusion of "physical" and "emotional," in my view, particularly for women, is paramount in this circumstance.

I notice that yesterday counsel said that there is no experience with this legislation anywhere, and that they were uncertain as to what regulations are being considered, so it would be an unfair question to ask them what circumstances they might consider would constitute a definition of "harm." So it's incumbent upon the committee, in drafting legislation, to provide further clarity for whatever tribunal panel or individuals will be bound solely by the legislation, which defines the parameters. The regulations allow clarity within the parameters. I give that distinction for all of us, because that's a very important distinction. The panel will never be able to stray outside of the legislative definition. In my view, "physical" and "emotional" cover virtually all elements of harm and it is not left to be interpreted under the regulations.

In this section—legal counsel can remind me—I've covered all three, instead of individually, so this involves birth parents, adoptees and the siblings of adoptees. It covers all three classes. I hope that's clear to the members.

The Chair: Before I ask Ms. Churley, Mr. Sterling, you have a question. You go first.

Mr. Sterling: I was going to ask legislative counsel, is there a regulation-making power under these sections to further define what "significant harm" is? I'm asking whether or not regulations can be passed by cabinet to further define what "significant harm" is.

Ms. Laura Hopkins: No, not on the government motion as it's currently proposed.

Mr. Sterling: So whatever is in the act is going to be what the board member is going to base his or her decision on.

Ms. Hopkins: That would be the standard, yes, the words in the act.

Mr. Sterling: In terms of the amendment Mr. Jackson has put forward, is it better to have a wider section or a narrower section? I think his intent is to capture more people rather than fewer people.

1610

Ms. Hopkins: The original wording just refers to "significant harm" without describing the nature of the harm. The proposed amendment would describe the harm as either "physical" or "emotional." I am not sure that I could identify another kind of harm that the board would consider if the words "significant harm" were left unmodified, but referring to physical and emotional harm would give guidance to the board about the kind of harm that the Legislature has in mind.

Ms. Churley: I just wanted to ask in regard to this amendment if there's any section in the bill that can be amended or if this could be amended in such a way that this could also apply to adult adoptees if there is a disclosure veto slapped on their information, for them to be able to come forward and say that they are suffering from physical—i.e., health—problems or emotional problems as a result of a disclosure veto. I don't believe that that takes the adoptees, on the other side of it, not being able to get their information into account, does it, Mr. Jackson?

Mr. Jackson: If you were listening to the question I raised in the House, that is not a concern for me, because if the birth parent or the father of the child was guilty of a criminal offence—sexual assault, abuse—they're highly unlikely to present themselves and go forward toward a tribunal and say, "Look, I know I sexually assaulted my daughter 25 years ago, but I think I'm emotionally suffering because I've been disconnected from her." I don't see that as a problem.

Again, I'm trying to address the 1%, 2% or 3% of individuals who will be devastated by this and I'm trying not to use the example, Ms. Churley, of people who are concerned about social mores. I have been—

Ms. Churley: I'm not talking about social mores. I'm talking about serious harm, emotional and physical, if people can't get their information, which we have evidence of.

Mr. Jackson: Well, I've answered your question. I'm suggesting to you that not only do I agree that they have a right to make that case, I've made that case for the last 20 years. I am just simply saying I don't believe that someone who has engaged in abuse or sexual assault can make a case that they are suffering emotionally because they don't have access to their victim who is also their blood relative.

Ms. Churley: All right. That's fine.

Mr. Jackson: So I've answered your question.

Ms. Churley: Could I ask counsel to answer the question? Is there any area within the bill where adoptees can come forward if there's a disclosure veto so that they can also plead that they need information because of physical and emotional harm?

Ms. Hopkins: The opportunity for adoptees to come forward is addressed in part by the opportunity that they have to apply for reconsideration of the order. The difficulty is that the standard for issuing the order or rescinding it takes into account harm to the one but not harm to the other, yes.

Ms. Churley: So I would have to look at a way to amend that. OK. I'll work on that. Thank you.

Mr. Parsons: I think there's great merit to this amendment. I know just enough law to be dangerous, so bear with me. But my experience in the child welfare field as a volunteer and as an amateur is that when a child is deemed to be in need of protection, the courts have looked at three different definitions: physical, sexual and emotional, emotional being probably the most difficult to prove. Though you may suspect it, it is very difficult to prove. I'm aware of instances where individuals charged with "physical" for having done something of a sexual nature—a court has ruled that there was no physical harm to the individual.

So I would like to amend this amendment by inserting the word "sexual" between "physical" and "or."

The Chair: So it's an amendment to the amendment?

Mr. Parsons: Yes, an amendment to the amendment.

The Chair: So now we have the amendment to the amendment to the amendment. Is that a fair thing to say?

Any debate? I would like to hear if there is any.

Mr. Jackson: I'll accept it as a friendly amendment.

Mr. Sterling: Just a minute. I'm just trying to get straight what the last amendment was.

The Chair: Mr. Parsons, give us the wording again.

Mr. Parsons: It will be exactly the same as presented, except for—I'll read it.

I move that subsections 48.4(7), 48.4.1(3) and 48.4.2(3) of the act, as set out in government motion 21, be amended by striking out "significant harm" wherever it appears and substituting in each case "significant physical, sexual or emotional harm."

Mr. Jackson: I want to thank Mr. Parsons for being helpful here. Perhaps I'm a little too sensitive to this issue, but I don't think you can have insignificant sexual harm to somebody, so I'm having trouble with the word "significant" sexual harm. Any women who have been involved in this issue know this is a very sensitive issue, and I think you understand it as well. Physical harm can be significant or it can be less significant, but sexual harm, as our courts and our society have deemed, is all significant. I'm comfortable if we eliminate the word

"significant" and just have "physical, sexual or emotional harm" and leave it as simple as that.

Mr. Parsons: I think we're trying to achieve the same thing.

Mr. Jackson: I don't want to offend.

Mr. Parsons: I'm happy with that if you are. I would just like to be consistent with the other parts of the—

The Chair: I'm sorry, Mr. Parsons. Did you say you were prepared to drop the word "significant" or not?

Mr. Parsons: I think Mr. Jackson's correct. I intended this to be a friendly amendment. If you would prefer simply to change your wording—

Mr. Jackson: That's helpful, Mr. Parsons. I appreciate it.

The Chair: So basically, we have a friendly amendment, which means we don't need an amendment to the amendment.

Interjection.

Mr. Parsons: I've got to take that back. We're having difficulty with the concept of dropping the word "significant."

The Chair: So your amendment to the amendment is still the same, including the word "significant"?

Mr. Parsons: My mouth is not connected to my brain at all times. It's an asset in the profession I've chosen to follow. I will stick with the amendment and simply add "physical, sexual or emotional."

The Chair: So it's not a friendly amendment, but it is an amendment in itself, and that is the only thing we're discussing right now.

Mr. Jackson: I cannot be party to trivializing sexual harm. I just cannot. It's affected my family. I respect the personal concerns I hear being expressed across the table; I have similar ones. Your intention is not to trivialize it. This is the wordsmithing that says you have to prove—first of all, let me say I'm offended that a woman who's been raped has to go before a panel made up predominantly of men and plead the case that she's suffered emotionally. I'm deeply offended by it. I was offended when women had to go before a panel of men at a hospital to plead to allow them to have an abortion. That was the last tribunal that I recall doing this. I don't like this.

I'm trying to make this bill better, and I'm trying to make sure that a very small group of individuals in this province—we're dealing with less than 1,000 individuals, if we understand the current case files in our CASs accurately. This is being designed for them.

I have a letter right here today that gives me some of the details of how badly abused this child was. He's a little boy. It did all three of these. The child will not come out from underneath this. After 10 years, he's still suffering. This legislation asks that on his 18th birthday he have the capacity—I'm using that legal word within the context of laws in our province—to know that his perpetrator will have access to the knowledge of his name, his location and everything else if you don't file an objection and are capable, or have a third party to capably present your case over the course of the twelve months. If you miss that window, then this individual could present themselves on your doorstep.

I want to support this legislation. I'm really having trouble with this section. So I will vote on "significant physical"—we could change the words, "sexual and/or significant physical or emotional" if you want to separate, I'll work it in, but I cannot trivialize sexual harm to an individual. All sexual harm is devastating, whereas some forms of corporal punishment were not devastating, for many of us, when we were growing up. But it is sexually; emotionally is a harder one to define. I accept that. It is more difficult for a six-year-old who has been sexually assaulted to articulate that at age 18 than it is for a 14-year-old who was sexually assaulted and bore a child as a result of it. So all sexual assaults here are significant.

1620

Mr. Parsons: I really think we're trying to achieve the same thing. I sensed that yesterday, and I sense it today. I'm wondering—

Mr. Jackson: What is your objection to the wording?

Mr. Parsons: If I could retract, I'll withdraw my amendment. I'm wondering if instead after "in each case," it read, "sexual harm and/or significant physical or emotional harm," so that "sexual harm" does indeed stand on its own, because I agree, there is no insignificant—

The Chair: So that satisfies the "sexual" part.

Mr. Parsons: So following "in each case" we'd have "sexual harm and/or significant physical or emotional harm."

The Chair: That is the amendment. Again, it's on its own. Are there any more comments on that? Otherwise I'll be happy to take a vote on that amendment to the amendment.

Mr. Jackson: So have you asked me if I accept this as a friendly amendment?

The Chair: No, I'm told that contrary to what we do municipally, here we can't. It's a motion on its own, so I will have to take a vote on Mr. Parsons's amendment by itself, and then I will come to your motion.

Mr. Jackson: No, it's an amendment to an amendment.

The Chair: Yes, that's what it is.

Mr. Jackson: OK, so he's amending my amendment.

The Chair: Exactly.

Mr. Jackson: Very good. So he's inserting the word—

Mr. Parsons: "Sexual harm and/or significant physical or emotional harm."

The Chair: That's all we're discussing right now. Is there any debate on that amendment to the amendment?

Mr. Sterling: Where's legislative counsel?

Mr. Jackson: Give her a moment.

The Chair: Counsel, I think Mr. Sterling had a question for you. Could you please ask the question again, Mr. Sterling?

Mr. Sterling: Can you read the amendment as—

The Chair: Clerk, would you read the amendment to the amendment, please?

The Clerk of the Committee: Substituting "in each case sexual harm and/or significant physical or emotional harm."

Mr. Sterling: Can you put "and/or" in? No? OK, that's what I'm asking you about. So what should we put in?

Ms. Hopkins: From a drafting point of view, instead of "and/or" I would suggest just "or."

The Chair: Mr. Parsons, you may want to hear that part. Would you repeat that, please, for Mr. Parsons?

Ms. Hopkins: From a drafting point of view, instead of saying "and/or" between "sexual harm" and "significant physical or emotional harm," I'd suggest that we say "or."

Mr. Parsons: I've had nearly eight hours of legal training, so I would defer to your opinion.

The Chair: So are you satisfied, Mr. Jackson?

Mr. Jackson: So what you're saying is that the board is now adding an additional reason that the veto would be extended—authorized—if, in their opinion, there is a chance they might be sexually assaulted again?

Mr. Parsons: Yes.

Mr. Jackson: OK.

Mr. Parsons: It's not based on what happened in the past, but a fear or belief that it might happen.

The Chair: OK?

Mr. Jackson: Well, no. That's the part—I want to start with a question, if I may, Mr. Chair.

The Chair: Yes, you can.

Mr. Jackson: This would be for legal counsel and for the representative from the adoption registry department.

As I understand it, this bill states that—and I will get the section. This bill in section 48.4—in section 8, 48.4(3)—no, sorry; that's emotional and physical harm. I'm sorry.

The registrar of adoption information would be wound down, and therefore some records would no longer be available in the process. I wanted to ask you how CAS records are being treated under the new legislation. The reason I'm asking that is that the CAS records contain details around the issue of the conduct of the birth parent, the adoptee, the state of mind of the adoptee and the state's view of the degree of risk associated. I might remind you—I'm sorry, that's rude. It concerns me, and you don't need to be reminded, that a 15-year-old who is caught in this only has three years before the bill takes effect. So can you help me navigate through that? I have some concerns because I'm aware of what's contained in those records. I'd like to know if these records will be available to the tribunal.

Ms. Susan Yack: Disclosure of information by children's aid societies and others is dealt with in section 162.3 of the bill, and it provides for regulations to be made dealing with information that would be disclosed and to whom it would be disclosed.

Mr. Jackson: Is this tribunal picked up in that?

Ms. Yack: It says, "A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed."

Mr. Jackson: That's 162.2?

Ms. Yack: It's 162.3(2).

Mr. Jackson: Oh, sorry. OK, "that relates to adoptions." By legal definition, does that include disclosure?

Ms. Yack: When you say, "Does that include disclosure"—

Mr. Jackson: "That relates to adoptions." "Information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed." OK. So we're left to the regulations to determine whether or not the tribunal has access to those records.

Ms. Yack: That's right.

Mr. Jackson: OK. The tribunal currently has access to those—what do we call this?

Ms. Yack: Child and Family Services Review Board?

Mr. Jackson: Yes. They currently have access to CAS records for appeals—

Ms. Yack: I'm not sure in what section you're thinking that they would have access to those records.

Mr. Jackson: OK. So we would need to put in legislation if we wish to have those records accessible to the tribunal.

All right, let me ask the question the other way: Does the 18-year-old, who's now of age, have a right to her CAS records?

Ms. Yack: The CFSA doesn't have—there's no legislation in force that deals with access to CAS records. This subsection just leaves it to regulation as to what information would be given and to whom and in what circumstances.

Mr. Jackson: Well, this is a leading question: Don't you think a child has as much right to the information about their adoption as they have a right to find out who their mother was?

1630

Ms. Yack: I don't think that's really a question I can answer.

The Chair: That's political., I would suggest.

Mr. Jackson: OK. But we are giving the right to the birth mother to have access to information to which she was a party at the point of adoption; we are now not entrenching in law that we give it to the child once they become an adult at age 18. The mother has access to the knowledge of the records by virtue of being a participant. She surrendered her child; she signed some kind of documentation; she may have participated at the level of a court. Correct? So it is a double standard that we allow the parent to have that knowledge—it has been bothering me since I read these amendments. The question that I want to ask you is: How will a child who has been the victim of a sexual assault by a family member know that, upon turning 18, if they don't have access to their records?

Ms. Yack: As I said, there is not legislation in force that deals with access to CAS records. However, children's aid societies do give information to adoptive parents when placing children for adoption.

Mr. Jackson: They have a duty to the adopting parent. Is there anything in the regulation that says that the adopting parent—

The Chair: Mr. Jackson, could I recommend to all of us that we stick to the amendment to the amendment? Once we finish this, we can get into the rest. I'm thinking of talking to the actual section.

Mr. Jackson: All right. I'll wait until you finish your ruling, and then I'll respond to it.

The Chair: What I'm suggesting to all of us is that there are too many amendments. I would like to deal with the last one. If we can deal with that, before we finish with the section we can make all the general statements. The other thing—

Mr. Jackson: OK. Are you done with your ruling?

The Chair: Mr. Jackson, please. The other observation I have is that I suggested that the staff is here to give us legal opinions, not political opinions.

Mr. Jackson: I asked one question of that nature, Mr. Chair.

Ms. Churley: I have a point of order.

The Chair: A point of order, before I recognize Mr. Jackson. I also saw Mr. Ramal wanting to speak before, but a point of order has precedence.

Ms. Churley: It was that that I was going to speak to. We're speaking to this amendment, and I understand where the member's going—

The Chair: Point of order, please.

Ms. Churley: I'm setting up my point of order, Mr. Chair. I understand where Mr. Jackson is going with this, but my point of order is that somewhere further on in this package we'll be dealing with amendments to this issue, because I think it's one that we all recognize—I know the Liberals have one, and I have one—we have to deal with in terms of what happens to those records. I'm just trying to facilitate some movement here, because we are going to be dealing with that particular section.

The Chair: I thank you for that. Mr. Jackson, the floor is still yours.

Mr. Jackson: If we are creating a section here that allows a person to apply for a disclosure veto—that's what this section's about—I'm trying to establish whether or not an individual is even in a position to know that they might need one. I'm thinking of the adult adoptee. That's why I'm trying to understand how this reveals itself—

The Chair: It's an amendment.

Mr. Jackson: Of course it's an amendment, but of what value is it?

At the point when I was responding to the Chair, you were sharing with me the fact that the adopting parent has the knowledge. So now two out of the three individuals have the knowledge. There's no guarantee that the adult adoptee will be informed. I'm not going to read into the record the letter of anguish by an adopting parent who was asking the question, "When should I tell my daughter this information?" If she's never told, how can she defend a right that we're giving this individual who's now an adult?

To be fair, I'm asking a legal question, because I don't know if this has been thought through from its legal perspective, that you've given that right to two out of the three individuals involved and not given it to the one who was sexually assaulted.

The Chair: Thank you. Why don't you give us your opinion, and then I will have the clerk read the amendment to the amendment so everybody is on the same page. Can you give the answer, please?

Ms. Yack: If you're asking me if the act or the bill says that a children's aid society has to inform an adopted person of certain matters, I would say there's nothing I'm aware of in the act or bill that says that.

The Chair: OK. Thank you. Now, could the clerk remind me and everybody else what it is that we will be voting on?

The Clerk of the Committee: On the floor at the moment is an amendment to Mr. Jackson's amendment that replaces the last line of his amendment and replaces the final words, substituting in each case "sexual harm or significant physical or emotional harm."

The Chair: That's on the table. Do I have any more debate?

You're OK, Mr. Jackson, with that? Thank you.

Mr. Sterling.

Mr. Sterling: The same point occurred to me last night when I was thinking about this, and that is that, essentially, what happens here is that the natural mother, who is aware of the circumstances associated with what's happened with the child, is put in the position of having to go to this tribunal to protect the adoptee she has given up at some place along the road, because she's the only one who has knowledge that there's somebody bad in the background. That's correct because, basically, the adoptee couldn't apply under this section to get a block veto or disclosure veto, because the adoptee doesn't have any knowledge of how bad a character the father was.

Ms. Yack: The bill provides for three different types of orders: one to protect a birth parent, one to protect an adopted person and one to protect a minor sibling of an adopted person. It says, "because of exceptional circumstances, the order is appropriate in order to prevent significant harm." I know there's a motion to amend that. It does not focus on harm which happened in the past, but to prevent significant harm.

Mr. Sterling: But the evidence would be that this person did something in the past and therefore is capable of doing something in the future. That would be the fear of anybody who—

Ms. Yack: That could be one example.

Mr. Sterling: If there was a straight disclosure veto and the adoptee said, "I want a disclosure veto," then he or she could do that. But under this circumstance, where you're forcing him in front of a board, he doesn't have knowledge of the case. He can't argue before the board

"significant harm" because he's not aware of what happened to him when he was small or what happened when his mother was raped, or whatever.

The Chair: Only on the amendment to the amendment.

Mr. Khalil Ramal (London–Fanshawe): I just want to say we've been talking for a long time. I know it's a very important issue to be raised and asked, but I'm wondering what we're doing right now. We have two amendments before us, one from Mr. Jackson, I think, and a second one from—

The Chair: I'm ready to take a vote, if there are no more comments. Are there any comments on the amendment to the amendment? I will now put the question.

Shall the amendment to the amendment carry? Those in favour? Those opposed? Only one opposed. It carries.

Now we are left with the amendment to the original motion. Are we ready for a vote? OK.

Shall the amendment carry? Those in favour? Those opposed? The amendment carries.

Now the motion, as amended: Any comments?

Ms. Churley, I understand that you may have another amendment. Now that we are on the main motion, with the two amendments, is there one amendment from you?

1640

Ms. Churley: Yes. I'm just getting a copy made. I don't have a copy at the moment.

The Chair: So we'll wait until we get it, and then you can read it into the record. Do you wish to make some comments on what you're asking to amend, or do you want to wait for the actual copy?

Ms. Churley: I can wait. They were the comments I made previously about giving some remedy to adoptees who are faced with a disclosure veto, so that they are able to come forward and try to show that there would be significant harm, either emotional or physical, in not getting their information. That's the gist of the amendment, simply put.

The Chair: Just wait a moment until we get the actual copy. If anyone wishes to make any comments, since we heard Ms. Churley's comments, I'll be happy to—

Mr. Ramal: We're not dealing with the amendment from Mr. Parsons?

The Chair: No. This amendment will be addressed first, and when it's dealt with one way or the other, then we'll still be left with the original motion with all these amendments. We've already gone through two; we'll see if the third one goes through or not.

Ms. Churley: We'll have the copy in a moment.

Just so you understand, it is to address the issue I'm concerned about that this doesn't deal with: an adult adoptee who discovers a disclosure veto and who is suffering from either physical or mental—again, "significant"—we'll have to see; I forget now how it's worded. We just wrote it. They would be able also to go to the tribunal to show that they're suffering from significant physical or emotional crises that might be greater than the sealing of the records, so that they can get their information. That's what the motion will do. Would people support that?

Mr. Ramal: I take it that "significant physical or emotional harm" does not include sexual etc.? It's not open to include everything as an umbrella? Just a question. We keep adding and expanding. This title doesn't include all these concerns?

Ms. Churley: What's the wording of the one we finally just passed? I can't remember.

Clerk of the Committee: The motion as it stands, as amended: "Subsections 48.4(7), 48.4.1(3) and 48.4.2(3) of the act"—

Ms. Churley: Just the wording.

The Clerk of the Committee: OK—"be amended by striking out 'significant harm' wherever it appears and substituting in each case 'sexual harm or significant physical or emotional harm.'" That's the motion, as amended.

Ms. Churley: That's what was just passed.

The Chair: Yes. By the way, at the end of the day, any amendments which we've already agreed to are attached to the original motion. If this one goes through, it will be attached to the original. If it doesn't, then it stays as it is presently.

Ms. Churley: OK. I can now read this. Section 8 of the bill, government motion 21:

I move that subsection 48.4(7) of the Vital Statistics Act, as set out in government motion 21, be struck out and the following substituted:

"Order

"(7) The board shall make the order if, in the opinion of the board, the harm to the adopted person that would result from the disclosure is significant and is greater than the harm to a birth parent from prohibiting the disclosure."

The Chair: Any debate on the amendment?

Ms. Kathleen O. Wynne (Don Valley West): I understand the intention of this amendment. I also understand that we're dealing with competing interests, and I want to refer back to the member for Toronto–Danforth's remarks yesterday that this is such a difficult issue of competing rights. I think that we all have to acknowledge that. I'm not going to support this amendment, because I think there's a degree of subjectivity that will come into this that will make it very difficult to determine which harm is greater. I think it would be very difficult to set down criteria that would demonstrate which harm would be greater. So although I understand the intention, I'm not going to be able to support this.

The Chair: Any further debate? Mr. Sterling, please.

Mr. Sterling: This is just one way. In other words, this is only if the veto disclosure is, in essence, against the adopted person. It's not the other way. Why wouldn't you do it both ways? If you're going to—

Ms. Churley: Oh, I don't care. I'll drop it. I want to get through all of these amendments. It's clear I won't get support. I withdraw. There's no reason to have any more discussion.

The Chair: There is a withdrawal; I'll accept the withdrawal.

Basically there is the original motion with the two amendments on the floor. Are there any questions? If not, I'll take a vote on the motion, as amended.

Mr. Sterling: What are we voting on now?

The Chair: I just said it, Mr. Sterling. There is the original—

Ms. Wynne: Page 21.

The Chair: It's the original motion, plus the two amendments that both—

Mr. Sterling: So we're talking about all of it, 21, 21a, 21b, 21c—

Clerk of the Committee: Plus Mr. Jackson's and Mr. Parsons's amendments.

Mr. Sterling: Yes, those have been dealt with.

The Chair: No, but they're incorporated in the original motion.

Mr. Sterling: OK.

The Chair: OK. Are we ready?

Mr. Sterling: No, I've got some questions about the board.

The Chair: I would ask everybody to listen to Mr. Sterling. That's the only way we're going to get through this, please.

Mr. Sterling: Can you describe what will go on at the board; in other words, is this going to be a single person, a panel? Do we know?

Ms. Yack: It doesn't specify if it would be a single person or more than one person.

Mr. Sterling: So it could be one person then? It could be an individual?

Ms. Yack: That's possible.

Mr. Sterling: Which I object to, incidentally. I think I want to put an amendment that the board be composed of at least three people. I would like to put a motion forward to amend this particular part.

The Chair: You know you've got to put it in writing.

Mr. Sterling: Yes, I'll have to do that. I'd like to also ask—

Ms. Churley: A panel.

Mr. Sterling: One of the problems is, we only got these amendments yesterday, so it's difficult to assimilate what's being created here and take into account a procedure that you can make as fair as possible. The actual hearing that will take place is not according to the Statutory Powers Procedure Act. Is there any procedure at all that will be followed?

Ms. Yack: I point you to subsection 48.4(6): "The board shall take such steps as may be prescribed in order to ensure that"—in this case—"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." There are similar provisions when the other persons are asking for an order.

Mr. Sterling: That's 48—

Ms. Yack: Subsection 48.4(6). It's page 21a.

Mr. Sterling: So that's going to be prescribed, right? Is there any record of the proceedings?

Ms. Yack: This is all that addresses the procedure, and it just says "take such steps as may be prescribed."

Mr. Sterling: So there's no requirement to have a record of the proceedings or what the evidence was or what the proponent said?

Ms. Yack: There's nothing else that addresses that.

Mr. Sterling: And there's no requirement for the board to explain its decision? It can be yes or no?

Ms. Yack: I'd really have to say that it requires them to give an order, and everything else will be prescribed by regulation.

Mr. Sterling: Sorry?

Ms. Yack: It requires an order, and the other steps will be prescribed by regulation.

Mr. Sterling: So the only procedure is what's in subsection (6) and that they may give an order, I guess. If they turned somebody down, they wouldn't give an order.

The Chair: Is there any further debate on the matter?

Mr. Sterling: I have an amendment.

The Chair: Oh, yes. The amendment has to be given to us in writing so we can make copies.

Mr. Sterling: I'm still working on it.

The Chair: You're still working on it. Why don't we recess for five minutes, so we can stretch our legs and our minds. We'll come back in five minutes.

The committee recessed from 1652 to 1707.

The Chair: I believe the motion is here. Mr. Sterling introduced it. Mr. Sterling, do you wish to read the motion for the record, please?

Mr. Sterling: I move that government motion number 21 be amended by adding the following section to the Vital Statistics Act:

"Procedural matters

"48.4.4(1) When making decisions for the purposes of sections 48.4 to 48.4.3, the Child and Family Services Review Board shall sit as a panel of at least three members.

"Same

"(2) The board shall conduct proceedings under sections 48.4 to 48.4.3 in accordance with such procedural requirements as may be prescribed."

The Chair: Any comments?

Mr. Sterling: The second section was put in from a suggestion that I think legislative counsel made to me that there probably should be some kind of procedure set down for the three members of the review board. I'm told by legal counsel for the ministry that in several other boards that the Child and Family Services Review Board strikes, they usually have three members on their panels. Perhaps you'd like to comment on that.

Ms. Yack: The regulations made under the Child and Family Services Act say that for the Child and Family Services Review Board, three members constitute a quorum.

Mr. Sterling: Are you saying that we do or we don't need this then?

Ms. Yack: The regulations already say that three members constitute a quorum for the Child and Family Services Review Board. I think I have said before, it may be one, but as I mentioned, that's the Custody Review Board and they're sitting as a different board then.

Mr. Sterling: OK. I'm putting forward the motion anyway, and by putting it in the act, then it's there and people can see it.

The Chair: Is there any further debate other than what Mr. Sterling has said?

Mr. Parsons: Yes. I cannot support this, for a number of reasons. First of all, I think it falls within the regulations. The discussion to this point has been that someone has to appear in front of a panel, when in fact the regulations have not yet defined whether it can be done by electronic means or whether it can be done by letter. I don't think we need to define it at this point.

Secondly, maybe the right number's three, maybe the right number's five and maybe the right number is flexible; it may be one individual. It is incredibly difficult for a victim of assault to sit and tell their story, and maybe for some individuals one is the right number. I can't support it. I've worked with too many victims of assault who revisit the assault when they talk about it. So I don't believe at this stage we should define the number. I would prefer to leave that for regulations.

Mr. Sterling: I'd like to respond to that. The whole idea of having three people is that there's no appeal from this particular kind of an order. We're not talking about a normal kind of situation where you might be able to appeal to the courts if a procedure was broken or whatever it is. I just find that if you have three people in a room, they're more likely to carry on in a somewhat objective manner and on the basis of some kind of principles, rather than if one person is charged with this particular task. We may get someone who is extremely pro giving disclosure vetoes or you may have somebody who's not. My view is that there's safety in numbers. When it's a closed-door kind of procedure, I think that having three people make a decision is just eminently safer in terms of the outcome being somewhat consistent from time to time, as they hear these cases.

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

Shall the amendment carry? Those in favour? Those opposed?

The amendment does not carry.

We are left again with the original motion with the two amendments, which we have debated. Is there any further debate on that?

Mr. Jackson: Last night, I was intrigued by legislative counsel's missive to me that the government had come up with this section of the bill on its own. So I went and got a copy of the New South Wales legislation, and I found it rather instructive. The reason I found it instructive is because we are, in fact, modelling ours after New South Wales. When I look at this, it contains some additional elements which are contained—points of sensitivity. I'll just read one in to the record. I'd like to present it as an amendment, but I need assistance as to where, because I'm creating a new section in section 8. That is that the board may impose—and of course, "the board" refers to the CFSRB—additional conditions that may include, but are not limited to, "conditions requiring the person entitled to the adoption information to undergo counselling by a person specified" by the board "before the adoption information is supplied."

Counselling is controversial, and that's why I'm avoiding anything that refers to it as mandatory. But where the board is making a judgment call that a person could suffer emotional and physical harm, but not necessarily significant, they are now saying they will have access to the information. I believe that the board should have the power to authorize counselling in order to ensure the emotional safety of the individual.

Again, we're cobbling these together by virtue of a model which the minister, by her own statement, many times—that is a wonderful model down there. So I'm trying to read through it as much as I can. She has commented further, and I would need help with this, but there are her concerns, as stated in the paper, about people whose lives may be put at risk and therefore there may be some conditions involving peace bonds and other forms of legal surety that citizens who may be put at risk can be put in.

I would need some guidance as to which sections of this legislation deal with the orders, because right now it talks about the notice, the expiry, the order; it doesn't talk about conditions. I guess that might be the first title, and I'm looking to legal counsel to assist me.

The Chair: I believe that staff is aware of what you want to do.

Mr. Jackson: I have it written out.

The Chair: In regard to the section, I think you were asking which section—

Mr. Jackson: It needs to be titled and then—

Mr. Sterling: Could I ask a question? While we're having this done, and with regard to this section, it says, under section 11 on page 21(a), "The board file respecting an application shall be sealed and is not open for inspection by any person." So you put it in an envelope and you seal it. Who can open it?

Ms. Yack: I guess all I can say is what the subsection says.

Mr. Sterling: So why would you keep the record? Why wouldn't you burn it?

Mr. Jackson: There's an appeal mechanism—

The Chair: The question is for staff, I believe. I'm sure you have good intentions, Mr. Jackson.

Ms. Yack: Sub 10 says that the order or decision "is not subject to appeal or review by any court." The order can be reconsidered, though.

Mr. Sterling: Where's that?

Ms. Yack: "Reconsideration of orders" is 48.4.3.

Mr. Sterling: If you say that nobody can open the file, nobody can open the file. Is that right? It's in legislation. You can't change that by regulation. I don't understand. I would have thought you would want the file to be open if

you were reconsidering it. Maybe you can think about that while we are getting this amendment drafted.

The Chair: Was that your question?

Mr. Sterling: I'm not getting any answer as to who can open it. It can't be opened on reconsideration. You can't make a regulation to open it, because it's in statute form; nobody can open it.

Ms. Wynne: Could I just ask, if I go to this board as an individual and I make my case, and then I come back in three years and want my file opened, is it not possible for me to get the file opened? Yes. So I can change my mind.

Mr. Sterling: Doesn't the legislation say "any person"? Would that not include the applicant?

Ms. Yack: It does say the file shall be sealed, but the intention is that a person can come for reconsideration, and the nature of the order would change.

Mr. Sterling: Answer me. Can you open it, or can't you?

Ms. Yack: I don't see anything that specifically says the file can be opened.

Mr. Sterling: Right.

The Chair: Satisfied?

Ms. Marla Krakower: The policy intent is to protect the identity of the individual.

The Chair: We are still waiting, of course, for the—

Mr. Sterling: The best way you could protect them, if nobody has the right to open it again, is to burn the file—don't have a record.

Mr. Jackson: Again, the privacy commissioner has not seen these. This is a simple example. I don't mean to inflame it. They would ask, "Where are these records? Who's responsible for them and how would they be protected?" That's really the simplicity of this question. We're not being argumentative. I'm just saying that I'm used to seeing legislation that says the files are to be destroyed. If that becomes the end of it, that's the end of it or whatever, but these files are sitting in limbo. That is a privacy issue.

1720

The Chair: The floor is open if anybody has any questions. Until we actually get to the amendment to the amendment to the amendment, we can certainly try to clarify any questions any of you have. Otherwise, we'll just watch each other.

Mr. Ramal: Can we have the door open? It's too hot here.

The Chair: Yes, I will give you permission to do so, if you don't mind. Open the door. We have to try to be efficient as much as possible. We don't need an employee to do it. We'll save a dollar. I think it is the internal excitement that is warming up the room.

Mr. Ramal: Thank you, Mr. Chair.

The Chair: I'm pleased I made you happy.

OK, we have the amendment in question. I would ask the mover to read it into the record so that we can deal with it. Is that you, Mr. Jackson, or is it Mr. Sterling?

Mr. Jackson: It's me.

The Chair: Mr. Jackson, you have the floor.

Mr. Jackson: I move that section 48.4 of the act, as set out in government motion number 1, be amended by adding the following subsection:

Same

"(7.1) The board may impose additional conditions that may include, but is not limited to, conditions requiring the person entitled to the adoption information to undergo counselling by a person specified by the board before the adoption information is supplied."

The Chair: Is there any debate on this amendment in front of us? Mr. Sterling, please.

Mr. Sterling: I'm trying to figure this out. Maybe you can explain it to me, Cam. The person applying to the board is asking for a veto, and so you're saying—are they rejecting the veto and saying you can—

Mr. Jackson: Under the New South Wales legislation, this provision is put in there because the board recognizes, or the registrar general in the case in Australia clearly sees, conditions where giving the information will cause significant emotional distress. The board's inclination is to give access, but in the board's opinion, in Australia, that access will create a degree of emotional harm that warrants the state's support of counselling. If the regulations—well, it won't even be in the regulations. This is a legal point. In the process of determining risk and harm—emotional, physical or sexual—there will be occasions in a ruling where they may further recommend that counselling be made available.

Since you've got three parties to this scenario, all possibly wanting information, there may be some cases where a condition of counselling may be applied before the information is given to the person seeking it. The presumption, for an adoptee, is that the birth mother or the father is seeking the child, and as such wants access to the records. They may say, "We will grant you access, but given that we have looked at your checkered past, we may wish to ensure that there be counselling associated with that." Again, if we're entrusting this panel with the authority to determine access, we should be giving them the tools to make sure it's done in a sensitive, caring manner. That's all. Clearly, in Australia, that was a condition, and a very important one.

I have one further one that I'll present that comes from this legislation. Now maybe Mr. Sterling—

The Chair: Why don't I hear from Ms. Churley, and then I'll go back to Mr. Sterling, if you don't mind. Ms. Churley, please.

Ms. Churley: Just two things: I don't object to having counselling being made available. That's something I'm concerned about in the bill. I have an amendment to deal with that, that it be available upon request. But let me point out that the legislation in New South Wales does not have a disclosure veto of any kind, unlike this bill and the amendment the government's putting forward and the amendment the Conservatives are putting forward to bring in even tougher disclosure laws, which I object to.

But I'm making the point that because there's no disclosure veto, they have some extra protection in there in terms of the information that's been provided to people, number one. Number two, I would ask members of the committee, for the dignity of the people who are with us today who are involved in this issue and are adoptees or birth parents or whatever, that we be careful in terms of how we refer to them and their pasts. I would not refer to it as a "checkered" past. I think that is derogatory—I'm sure the member didn't mean it to be—and demeaning. I would just propose that we be careful how we use language and throw language around. All the people involved on all levels of adoption have dignity, no matter what happened in their lives.

The Chair: I think we all agree with that. Mr. Parsons?

Mr. Parsons: Yes. I'm conscious of the time. I'm sure both sides want to move this through out of respect for the people who are present in the room, so I'll speak quickly.

We're not talking about children; we're talking about adults able to make adult decisions. I accept, and I believe, that some adoptees will find information they would prefer not to have found. We can think of blood relatives—and I've mentioned it before in the House—we may not be real proud of, but that's life, that's fact. I'm entitled to know it and they're entitled to know it.

I find this motion extremely paternalistic, that someone is going to make a decision as to what an individual is capable or not capable of handling. I certainly will not support the amendment.

Mr. Sterling: You don't find it paternalistic then to ask a 70-year-old woman who was given the confidence that her record wasn't going to be disclosed, to put her in front of a board and keep a secret that she was promised about an incestuous son or daughter? Ernie, you can't have it both ways.

Mr. Parsons: We're not necessarily asking her to appear in front of a board.

Mr. Sterling: Pardon?

Mr. Parsons: There may be a perception on your side that they have to appear in front of a board, but that in fact has not been defined yet.

Mr. Sterling: How do they get a disclosure veto?

Mr. Parsons: As I indicated a few minutes ago, it may be electronic, it may be by letter. The regulations have not defined that yet.

Mr. Sterling: No, but the section says you've got to go to a board.

Mr. Parsons: You may apply to a board.

The Chair: Let Mr. Sterling finish and then you may wish to—

Mr. Sterling: I thought this was a hearing that we were having. Straighten me out. Is there a disclosure veto or not? Can you just say, "I want a disclosure veto because I think I'm going to be harmed," and one will be sent out?

The Chair: OK, Mr. Sterling?

Mr. Sterling: No, I'm asking that.

The Chair: I'd be happy to allow Mr. Parsons, if he wishes, to answer those questions. It's his choice. Mr. Parsons?

Mr. Parsons: The amendment that is before us says "may apply." It does not define the method of applying at this stage. So appearing before a board or tribunal may be the route, may be one of the options, may not be an option at all. It is far too premature to say how the form of "may apply" will in fact translate into regulations. The people who will be drafting the regulations, I suggest, will do it with some sensitivity. So the perception that they must appear in front of a panel and give their story is not yet defined. It's misleading in the sense that that may be one of several options.

The Chair: Back to you, Mr. Sterling.

1730

Mr. Sterling: This is crazy. Basically, what you're saying is that you're giving them the test, which we've talked about today, that there has to be significant harm. There's discretion in that decision, so how is it decided? None of this makes sense.

Ms. Wynne: I think what Mr. Parsons is saying is that it hasn't been defined at this point what the actual process will be. "May apply" may be physically standing in front of someone or some people, or it may be a different process. I think that's what Mr. Parson's been saying.

Mr. Sterling: But I think we have the right to know as legislators. We're making some pretty serious rules here.

Ms. Wynne: My understanding is that that's what we define in regulations.

Mr. Sterling: You just want to give this all to the cabinet and their goodwill. They will decide what happens. I don't know how to read this section. What does this section mean? I thought it meant there was a board and it was going to be a closed session.

Ms. Wynne: Could we ask staff to speak to this?

The Chair: I will ask staff to speak. You're asking the questions; I heard the answers. Staff may begin to assist us.

Ms. Yack: The bill says a person may apply to the board. It also provides regulation-making power for dealing with applications and reconsiderations of orders. The person "may apply." It may be dealt with in writing; it doesn't say that someone must appear before the board in person. The process isn't addressed in the bill and can be addressed in the regulations.

Mr. Jackson: This is a legal point. These are now adults we're dealing with. Historically, if there's ambiguity—if I'm listening carefully to Mr. Parsons—we would say in legislation—I don't want to pull out all the examples—that they can apply in person or in writing, so it is now covered. If the government doesn't envisage a process that allows a person to apply in person, then I think we need to know that.

One of the disability associations contacted me. They said, "Look Cam, we've got all these crown wards put up for adoption. Somebody has to articulate this for them. Not everybody is in a position to do that." They have a right in person or in writing, but it is a legal point that if

you are going to offer a disclosure veto and then not give it to them, which is the ruling from the review board, there are some points in law that require that they be able to attend, and there are some concerns legally about the right of appeal.

We had the Attorney General state in the House today that not all these matters were able to be resourced legally from their impact on the charter, because, if I listen carefully to Mr. Parsons, some of those decisions have not been made. We don't have a legal opinion on that one aspect that Mr. Sterling is raising, and that is the right of a person—all MPPs get people coming into their offices all the time saying, "I just got rejected by the government in this letter, in one sentence." I hope to God something as important as this won't just be rejected: "Your application for privacy has been rejected," boom, bang, gone. "There's no appeal, and by the way, you don't have access to the files, the discussions, what was decided or whether the review panel was unanimous or a hung jury"—well, it can't be; it's a panel of three; that's why we came up with three.

Can we at least, then, look at "in person or in writing," and then the regulations can say it's up to the individual? Heavens. Is the government not advancing this because it sees that these are people who—the fact that the government is now accepting that there should be a form of a veto—the question is, what is its purpose? Is it to mollify somebody, or is it to in fact create a legal mechanism which allows those who are in desperate situations, or in the case of the minister herself talking about these "honour killings" of children in Ontario—her words, not mine—that there is somehow a process that won't result in a one-line letter from this review board? I want to see this thing work, but I'm having a hard time believing it can work if you don't allow them to even be in the room.

Maybe the government wants to comment. You came up with this idea to have a veto; surely you had some principles that were guiding you. What is the principle, that the individual has the right to defend their system? I have a hard time having somebody assess the emotional stress that a rape victim is going to go through in front of a panel. It's bad enough that they've got to do it, but now you're going to tell them that they'd better express it on paper? Victim impact statements are only about 12 years old in this province. That's since we created them. I know; I drafted the legislation. They're difficult.

The Chair: Maybe Mr. Sterling wants to continue.

Mr. Sterling: May I ask legal counsel—I thought that this section was setting up a process where people can apply to prohibit disclosure. I thought that's what this was. I'm hearing back that it doesn't set up a process; all it does is give a right to the government to in some way regulate or develop some kind of other process in the future.

Can you answer that for me? What does this four-page section do?

Ms. Hopkins: Each of the provisions here makes it possible for a person to apply for an order. The process of making the application is to be prescribed by regulation. The process that the board uses in considering the application and reaching its decision is governed in part by some of the subsections in the motion; is governed in part by the rules of natural justice, which aren't ordinarily referred to in legislation; and in part it's governed by regulations. The Statutory Powers Procedure Act sets out in statutory form what the rules of natural justice ordinarily require. In this circumstance, the Statutory Powers Procedure Act is made inapplicable and so the rules of natural justice directly apply.

If you look at subsection 48.4(6), which is on page 21a of the motion, this is a provision that modifies the rules of natural justice in the circumstances, directing the board to take the steps required in the regulation to ensure that an interested party has an opportunity to be heard, but modifies the rules of natural justice to specify that the persons aren't entitled to be present at the same time, for example, which would otherwise be required by the Statutory Powers Procedure Act.

So what we have in these sections is an opportunity to apply for an order, the board has the capacity to make the order, there are some procedural rules that will be set out in the regulations, some procedural constraints set out in the act, and otherwise it's the rules of natural justice. It's very intricate.

Mr. Sterling: I'm saying, what of the right of the people who are making this? They don't have any right to a procedure under the Statutory Powers Procedure Act and they would have the rights of natural justice, but they are limited by subsection (6). Natural justice would say that the person has the right to appear.

1740

Ms. Hopkins: The person has a right to a procedure. The details of the procedure aren't set out in the statute. So the person has a right to make submissions and to be heard. For example, some tribunals conduct this kind of process by an exchange of documents. Others tribunals conduct this process by allowing the people to be present and to make oral submissions. Those details aren't addressed in this motion.

Mr. Sterling: But the act, as it now is written, here in front of us, does give the person a right to appear.

Ms. Hopkins: It gives the person a right to be heard.

Mr. Sterling: To be heard?

Ms. Hopkins: Yes.

Mr. Sterling: That could be by letter or it could be in person or by telephone?

Ms. Hopkins: Yes. That's ordinarily something that would be decided by the tribunal.

Mr. Jackson: If I may, Mr. Chair, then if there are lingering doubts that the regulations which will guide the tribunal say that they can only be received in writing or by tape, we would have to insert here that the options are in person, in writing or by tape or whatever.

Ms. Hopkins: Right now, the motion makes it possible for rules to be prescribed. It's also possible to set out in the statute the constraints that you would prefer.

Mr. Jackson: That's true. Because if I mention the three, then they are the only three, and that doesn't

include interpreters, so I'd have to include that. However, I'm nervous that the regulations would limit any one of those.

Ms. Hopkins: This isn't something that I can help you with. Perhaps the government members can help you with this.

Mr. Jackson: I raised the question earlier, that by amending this to indicate that if a person has the right, who is seeking a veto, to present their case in writing by tape or in person, I'm just nervous that they are only allowed to do it in writing. That's really all I care about here.

Ms. Wynne: I don't know if you are actually asking for an answer on that or you're just expressing that you think that's what the wording should be. My understanding is that the reason the wording is the way it is, is so that there is flexibility, because there may be, in different circumstances, a more appropriate method than in another circumstance. I think I've heard from that side of the table that there was a concern, on the one hand, that people would have to appear in person before a board. So that would argue that there should be alternative ways of applying for this order. I think, on balance, it's better to leave it open so that there are various ways of applying.

The Chair: Is there anybody else who wants to speak on the amendment to the motion? If there are none, I'll go back to Mr. Sterling again.

Mr. Sterling: What do we tell the people they're entitled to do? The only thing I can see that they are entitled to do is apply. That's the only thing that I see here. We don't know what that means. It appears that you've been able to put everything aside and make new rules as you go.

Ms. Wynne: If you read the first subsection, 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." Then it goes on to say that the "person's capacity shall be determined in accordance with the regulations and using such criteria as may be prescribed."

So there's an application process, then there is the consideration and determination in accordance with regulations and criteria. It's not just the application. The application will be dealt with. That's what the legislation says.

Mr. Sterling: But you're not telling us what the procedure is. There's nothing here. There's nothing in this.

We've got a new Chairman.

The Vice-Chair (Mr. Khalil Ramal): Just for 10 minutes.

Is there any further debate on the amendment? No? So—

Interjection.

The Vice-Chair: A recorded vote. We have the amendment before us here to the main motion, section 48.4.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Wynne.

The Vice-Chair: The motion is lost.

Mr. Jackson: Mr. Chairman, I have a further amendment, and I seek counsel's guidance as to where to put this. This is a section on advance notice. The object of this section is to provide for an advance notice system that enables the release of personal information under this act to be delayed for a fixed period to give the person requesting a delay the opportunity to prepare for the release and for any impact this might have on the person or person's family or associates.

The Vice-Chair: So we have an amendment from Mr. Jackson. Any debate on the amendment?

We can wait until it's written up and prepared for every individual person. In the meantime, does anybody have a question?

Ms. Wynne: When is it going to be written out?

Mr. Jackson: It's written out. Legal has to vet it and also make sure it's put in the right section.

The Chair: I guess we have a few minutes. Does anybody have a question or comment?

Ms. Churley: Can I make a comment?

The Vice-Chair: Yes, go ahead. We've been quiet for a while; now we have to listen to you.

Ms. Churley: The last gasp. I just wanted to point out to people as we go through these amendments that have just been written on the back of an envelope here that if you look at records across the world in other jurisdictions—Scotland, England and New South Wales are three in particular. Is it all three of those or some of them that don't even have contact vetoes?

Interjection.

Ms. Churley: All three? So there are jurisdictions within the world—as I mentioned earlier, some actually have just contact vetoes, and some, including these three, don't even have contact vetoes.

I just want to point out again that this is not reckless, ill-thought-out behaviour and legislation. Look at the people in this room here today. Some of them have worked on this issue for over 20 years and have studied other jurisdictions. We rely on them for our expert opinion as to how to craft a bill that is in everybody's interest.

I just wanted it to be said for the record that, contrary to some of the assertions from the Tory members here today—in my opinion anyway, I'm hearing that this seems to be reckless legislation that's going to cause people to jump off bridges and things. Please listen to the experts who are here, who have the knowledge and information, and look at jurisdictions across the world that have managed for many, many years to live with this kind of legislation without these horrible things taking place.

I think because there's so much focus now on this one area that's very sensational—there's no doubt about it; it will get the media—we are losing some focus in terms of what this bill is all about and the information we've been provided to come up with the best bill. There are some amendments coming up, which I'm hoping very much we can get to, that focus on some of the flaws that have been pointed out by the community so that we can fix some of the problems and improve the bill.

1750

Mr. Jackson: I just want to indicate that it was the minister who announced on Monday to the media, and not to this committee, that it was seeking amendments. I was shocked to see this. She talks about the importance of having a disclosure veto, and she goes on to say that she is "concerned that there may be cultures in Ontario that believe in 'honour killings' to seek retribution for children born out of wedlock." I think that's a serious statement. I didn't make the statement. I never once said that was an issue, but the minister apparently now goes on to say, "'I sat back and thought about that for a long time.... We can't deny that it may happen in some parts of the world or that it wouldn't happen here,' she said. 'If someone is going to be put in an extremely harmful situation then they would have that ability to be heard by the board.'" That's the minister stating this, not me.

We are labouring on a section constructed by her, which she has apparently had, according to her own statement, some time to think about. We got it yesterday. I'm anxious to get answers, and if members of the government can check with the minister about her state of mind on these matters and help us understand it, that would be extremely helpful. I'm sensing that the minister expects these people to be heard, but we're not sure. Ms. Wynne has been helpful in explaining what that might be.

The Chair: I think Mr. Parsons may wish to comment on this.

Mr. Parsons: I'd just like to express some disappointment at the lack of progress on the bill at this stage. I can think back to the late 1980s, when I was chair of a children's aid board, and this issue was being discussed then. It's been an issue for a lot of years. At that time, I actively opposed any disclosure.

I think I became an engineer because I love the concept that two plus two equals four. It's not nearly four; it's not 4.1; it's four. So I've struggled with the requirements of Legislatures to find compromises. One lesson I've learned in my experience of dealing with the public in my role as MPP is that, with few exceptions, if you give people the right information, they will do the right thing.

I am impressed with my constituents; I am impressed with the people who draft our legislation. I have every confidence that when the regulations are being put together, they will be put together to address this. That has been the history of this province, whether it be this government or other governments. I believe the people drafting it will do the right thing. I am pleased that there's provision in this bill for it to be reviewed in five years, but I also know that regulations can be changed from time to time if there are problems, without needing to go back to the Legislature.

But for an issue that has been so long, it is impossible to find a resolution that will make everyone happy. I appreciate the members from the opposition parties. I left yesterday saying that this was, to me, a very fulfilling afternoon, because people were saying exactly what they believed. I continue to believe that, but I think there are different opinions on this matter that will probably not be resolved no matter how many amendments are put forward.

I would just like to express disappointment for those who put so much energy into it and have been with us yesterday and today. We have created across the province, I think for the first time, some hope among adoptees and birth parents, who, in significant numbers, have contacted us with the struggles that they have faced in the past. We hold the key to making so many people happy. I would like to see this bill proceed, given that all three parties have indicated support. I hope it happens soon.

The Chair: The last amendment is being photocopied at this time and will of course be the last one of the day because it's almost 6 o'clock, but until the amendment comes, I'll be happy to hear more comments. Mr. Sterling, you're next.

Mr. Sterling: Listen, we have no interest in dragging this out, but quite frankly, your bill is a piece of junk. These amendments are terrible. They haven't been thought through. You're not giving the members of the Legislature a clue about what you're going to do. Yesterday, we passed an amendment that you're going to define what a birth parent is. We don't know how wide or narrow that's going to be; you've given that over to the cabinet to decide who they're going to include in this. Basically, you're saying you can apply to a board, but we're going to decide all the parameters of what happens on the board. Your legislative counsel can't answer questions about files; they can't be opened by anyone. It's a sloppy bill, and it was given to us at 1:30 p.m. yesterday afternoon even though the government received the amendments from the NDP and the Conservatives last Thursday. So listen, look at yourself in terms of the reasons that this is going so slow. This is a terrible piece of legislation in terms of drafting, and I've been through a lot of them. Mr. Parsons, God bless you, I know your motives, but give us a break.

The Chair: Just for the record, so that there's no misunderstanding, the amendments that were presented by the three parties were delivered to all of us on Friday, but both the PC and the NDP did additional amendments, and those were the ones that we received on Monday at about 1 o'clock. So in fairness, just for the record—not that it will change any discussion. Ms. Churley, you're next.

Ms. Churley: Since we seem to be having a broad-based discussion here: Mr. Sterling, come on. Mr. Sterling is the person who has, at every step of the way, obstructed any adoption disclosure progress over the years and is continuing that process now. So we can't stop that from happening, but I do want to put on the

record that I've witnessed it before in the Legislature when the NDP was in government, under the Tony Martin bill, filibustering until midnight so it couldn't get third reading; I've witnessed it in all of my bills that have been debated in the House—

Mr. Sterling: I spoke for 15 minutes.

Ms. Churley: Yes, so that the clock ran out. So we all know what you're up to, and let's just put that on the table and be telling the truth about our motives here and we'll just get on with it, but let's not play these games.

The Chair: Mr. Jackson, would you like to read it for the record and then I guess on Monday or whenever the next meeting is, we can try to deal with it.

Mr. Jackson: I move that section 48.4 of the Vital Statistics Act, as set out in government motion 21, be amended by adding the following subsection:

"Exception

"(7.1) If the board refuses to make an order prohibiting the disclosure of the information, the board shall direct the Registrar General to delay the disclosure for the period the board considers appropriate to enable the adopted person to prepare for the disclosure and its impact on him or her and on his or her family and associates."

The Chair: I see it's 6 o'clock. Before we start debating this amendment, I would like to recess until next Monday at 3:30 or so, where we will be picking up this amendment and hopefully the original motion with all the other amendments approved. I thank you for your understanding. Have a lovely evening.

The committee adjourned at 1800.

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