SP-36

ISSN 1710-9477

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Monday 6 June 2005

Journal des débats (Hansard)

Lundi 6 juin 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

Président : Mario G. Racco
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 6 June 2005

Lundi 6 juin 2005

The committee met at 1559 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): We were waiting for Ms. Churley to attend, and she's not here. I think, for those interested, we'll move on. If you don't mind, we'll do that.

Therefore, the order of business is Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents.

You will note that you have been given additional amendments from both the NDP and the Liberal Party. I want to make sure you know that there are those amendments. They have been numbered to place in the appropriate place in your packages.

We will resume our clause-by-clause consideration. When we adjourned, we were debating an amendment by Mr. Jackson. Mr. Jackson, I'll give you the floor, or I will open for any additional comments on your motion.

Mr. Cameron Jackson (Burlington): First of all, which page number specifically was it?

The Chair: We were dealing with 21(j).

Mr. Jackson: Mr. Chairman, I wonder if it's possible if we could get a brief briefing on these amendments. If I'm getting this correctly, I'm looking at 21(k), (l), (l), (l), (l)—I'm not sure how we're supposed to follow this. I'm looking at these for the first time.

Here's my problem. This is unprecedented, so it's hard for me to know, when I'm working on one section that may have impact on another section, the intent of which is covered in these, I'm sure, 30-some pages of additional amendments. So I wonder if it's possible to get a brief briefing on where these amendments sit and what they're about.

I don't want to ask for a recess while I read them, but I just walked into the room, and they're here, which is fair. There are reasons for that, and I'm not questioning that. I'm just questioning about—on a go-forward basis, I have to be in a position to understand these in order to contribute, and I don't want to be putting forward an amendment that offends something else that I'm unaware of. I'm in an awkward position here, Mr. Chairman, and I'm asking for your assistance on how to better understand this.

The Chair: I'll be happy. If I understand correctly, we are dealing with yours, which is 21(j), but there are two additional amendments on this section, which are 21(k) and 21(l). What I will do is ask staff, if possible, to explain. Normally, I would ask the member to explain, but maybe staff can give us a summary of what those two amendments will do so Mr. Jackson will have a better appreciation. Then we'll go back to Mr. Jackson's amendment. Would that be OK?

The Clerk of the Committee (Ms. Anne Stokes): I can explain simply that we have received these amendments in addition to the package we already had. There are two new amendments from the NDP and a number of new amendments from the Liberal Party, some of which are replacing the amendments in your package. There are, I believe, two new ones. In terms of what they set out to do, I would suggest perhaps the PA or ministry staff could outline that.

The Chair: Both amendments in this section are from the government. Mr. Parsons, do you wish to give us just an appreciation of those two? Nothing to the discussion, because I think we should discuss them as they come up. Would you please?

Mr. Ernie Parsons (Prince Edward–Hastings): I'm fully prepared to have the staff do it.

The Chair: OK. Would the staff, then, please? First of all, introduce yourself for the record. Then the only thing I want from you, if I may, is a brief appreciation of 21(k) and 21(l). OK? Thank you. The floor is yours.

Ms. Marla Krakower: I'm Marla Krakower. The new government amendments—the proposal—would create an automatic prohibition against disclosure to birth parents until it can be determined that the birth parent did not actually abuse the adoptee. This amendment would apply only to crown ward adoptees.

The process that would be followed, which is outlined also in the draft amendment, is that when a birth parent approaches the registrar general asking for identifying information, before the registrar general would actually provide any information to the birth parent with respect to the adoptee, there would be a request of the custodian

of information, which is also outlined in another section of the bill, to do a check of the records. That custodian would check which children's aid society, if any, the adoptee was adopted from. The children's aid society would then do a check of the files to determine whether there was abuse of the adoptee when he or she was a child. "Abuse" would be defined in the regulation.

If there was a determination of abuse, then the custodian would notify the registrar general not to give information to the birth parent. Birth parents would be able to request an appeal of the decision to the Child and Family Services Board. In addition, an adoptee could waive the prohibition if he or she so chooses.

Mr. Jackson: If I have the right page, is that replacement motion number 8? Is that the one that you were speaking to?

Ms. Krakower: I'm actually referring to the government motions, the new ones that are being tabled as a whole, what the policy intent is overall.

Mr. Jackson: They're not paged. It says "replacement motion number 8." Is that the one that you were referring to?

Ms. Laura Hopkins: I think we're talking about motion 21(l), which adds new sections, 48.4.4 and 48.4.5.

Ms. Kathleen O. Wynne (Don Valley West): Because there is a lot of paper in the replacement motions, I'm just wondering if staff could go through 21 and tell us which pages come in which order, because we have it in a number of forms. If you could do that, that would be helpful, so we'd know what is on each of those pages in 21.

The Chair: It's 21(j), (k), (l).

Ms. Wynne: Well, there's a and b—I just think we need some clarity on what's in 21.

The Chair: Can staff assist us, please?

Clerk of the Committee: I might be able to help you there. The original motion is pages 21(a) through (d). That motion has been amended by 21(e) and 21(f).

Mr. Jackson: I don't have a 21(e), for starters.

Clerk of the Committee: It was distributed last week. I can get you a copy of 21(e) and (f). If you remember, it added the "significant harm" part.

On the floor we have Mr. Jackson's motion 21(j), to amend that. In addition, we have government motions 21(k) and (l), which have not yet been moved. There are additional motions in that package that was received today.

The Chair: So what we have is a motion which has already been amended, and we are continuing with the amendments.

There are three additional amendments that we have to address here today, and the first one is page 21(j), which is Mr. Jackson's motion, which we debated to some degree last Tuesday. We will continue any time we're ready. What I thought we should have done is to get a flavour of what 21(k) and l meant. I think we did that. If there are no more questions, I'll go back to you, Mr. Jackson.

Mr. Norman W. Sterling (Lanark–Carleton): Which one?

The Chair: We are dealing with 21(j) right now.

Mr. Jackson: No, we're not—21(j) is my amendment. I'm still trying to understand what amendments are in front of me, and I want this on the record. I have amendments in several different locations now. Does the clerk have a bundled package?

Clerk of the Committee: I have not incorporated the new amendments into the original package. I just received them this afternoon myself. The page numbers are intended to indicate where they would be fit in.

Mr. Jackson: Mr. Chairman, I request a 15-minute recess so we can get the amendments in front of us in the proper order. I've never had this happen to me before. You've been very good, Mr. Chairman, but even before I try to understand it, I'm having a hard time finding all these pieces of paper, because we've had four different tablings of amendments to this bill. Today is the fourth. I have another one that I'm tabling today that's almost finished, and I apologize for that, but could I request that, so I can have the complete set in front of me and can follow it properly?

The Chair: You asked for 15 minutes and I'm going to give you 15 minutes, but Ms. Churley wants to speak. Can I hear her comments, and then I'll—

Mr. Jackson: Sure.

Ms. Marilyn Churley (Toronto–Danforth): Instead of taking a 15-minute recess—after all, we end at 6 o'clock today—while we sit here, with everything in front of us, can we go through it with the clerk and make sure we have all our amendments in order? They're all numbered. I think that should only take a few minutes, if everybody would agree to that. We could do that right here and now.

The Chair: Mr. Jackson, do you still want 15 minutes, or would five minutes do the job for you?

Ms. Churley: Let's just do it here instead of having a break. Let's go through it and make sure we all have it in order.

The Chair: Mr. Jackson made a request. It's my understanding that the Chair must abide by anyone making a request. Therefore, unless he's satisfied, I'm going to give him 15 minutes.

Mr. Jackson: I'm worried that it's going to take longer if we try to do it as a committee. I'm probably the only one confused here. I don't have all of them in front of me. I'm in your hands, Mr. Chairman.

The Chair: If you're in my hands, I'd be happy to ask Anne to take us through these pages. Would you do that right now, please?

Clerk of the Committee: Do you want me to start with page 1?

The Chair: Should we start with 21(j) and then go to (k) and (l)? That's what I'd like to do. That's the central idea of it. Would that be OK, Mr. Jackson, since you made the request?

Motion 21(j): Where do we find it?

Clerk of the Committee: Motion 21(j) was distributed last week during the meeting on Tuesday.

The Chair: And it's page 21(j) in our old books.

Clerk of the Committee: It's 21(j).

The Chair: Does anybody have a problem finding 21(j)? If there is, we can get copies to you.

Mr. Sterling: I don't have 21(j).

The Chair: Can we have a couple of extra copies?

The Clerk of the Committee: Is there anybody else missing page 21(j)?

The Chair: So only one page is missing, 21(j). Does anybody else need it? No one. Why don't you give my copy to Mr. Sterling and we're fine?

The Clerk of the Committee: Then you don't have a copy.

The Chair: Oh, I don't have it. So then Mr. Sterling is quite correct, isn't he?

Mr. Sterling: That's why I think it's easier just to get them all copied.

The Chair: We've solved the problem. So we dealt with 21(j).

Now is anybody missing 21(k)? Mr. Sterling are you OK with 21(k)?

Mr. Sterling: Yes.

The Chair: How about 21(l)? Is anybody missing 21(l)?

Mr. Sterling: Bingo.

The Chair: Sorry. Did you say you're OK, Mr. Sterling?

Mr. Sterling: I said "Bingo."

The Chair: How about my good friend Mr. Jackson? Does he have it?

Mr. Jackson: I'm going to call a 10-minute recess right now. This is ridiculous.

The Chair: A 10-minute recess.

The committee recessed from 1612 to 1627.

The Chair: If we can all have a seat, we will take another crack at 21(j).

Mr. Jackson, the floor is back to you on 21(j), please.

Mr. Jackson: As I indicated last week, this is a provision that I found in the legislation from New South Wales. Because of the manner in which their legislation is set up, there is unwanted disclosure of a serious nature. There was a response to that, obviously, by suggesting that there must be a certain amount of lead time. Since there's no appeal mechanism, this would provide a reasonable period of delay before the information is provided to the requesting party.

I've talked with one family who have indicated that they want time to change their name and to move, to change their phone number and a few things of that nature. This was a lady who had been sexually assaulted. I object to the notion that this individual finds herself potentially in this situation with the legislation, unless it's amended, but at least this acknowledges that people need time to make major changes or to notify members of their family of a pending disclosure.

Mr. Parsons: The amendment—not this one, but the philosophy that we're putting forward today is that if the birth parent goes before a tribunal on this specific type of case, it's not that they have to justify that they won't do anything in the future; they have to prove that they didn't do anything in the past. I suspect the tribunal will be very good—not suspect; I absolutely believe they will be.

However, if there are instances where they do overrule, I think this is a good amendment. We're certainly prepared to support it, but we would like to add more amendments, because if we're going to give one side some time to get their affairs in order, we believe that the same thing should apply to the other side, whether it's a birth parent or whether it's an adoptee. I don't know if we have it with us, but we would like to support this with parallel legislation that goes the other way so that both parties have the same rights.

The Chair: Ms. Wynne and then Mr. Sterling.

Ms. Wynne: I believe that staff has some material that would show how we could do that balance. I'm just wondering if that would be helpful. We want to agree with this, but there's a counterpart to it. Could we have that circulated? Would that be OK, Mr. Jackson?

Mr. Jackson: Sure.

Ms. Krakower: I can just add that in this particular amendment 21(j), this is in a situation where the adoptee has gone forward to the CFSRB to try to obtain an order prohibiting disclosure and the board has made a decision not to provide an order that there be a delay in releasing the information. The complementary amendments that the government would introduce are just in a situation now where the birth parent is going before the board and has asked for an order prohibiting disclosure and the board has made a decision not to make an order that there be a delay in the information being disclosed the opposite way to the adoptee.

The Chair: Mr. Sterling.

Mr. Sterling: When we were asking last week about the process, we were saying, "What is this? Is it a tribunal? Is it one person?" In fact, I put forward a motion which was voted down that there be at least three people. The answer back was that there hadn't been a decision made with regard to what the nature of this board was going to be. There was some talk about an electronic thing, and there was an exchange, some talk about a written process etc.

Am I now to assume that within these amendments you're nailing this down to a tribunal?

Mr. Parsons: I used the wrong word. There will be a process for making the decision, whether it be an individual or whether it be a tribunal, and I've taken the easy route, which is to say "tribunal." But no, there's still a need to establish the appropriate way to present, and it may be more than one way, so the tribunal was an example only.

Mr. Sterling: The trouble I'm having with this amendment that Mr. Jackson is putting forward is that the person pleading the case would say, "I need a disclosure veto," and then there would be a response back which would probably say to the person, "I don't think you're going to get that." Then they might respond back and

say, "Well, will you give me some time so that I can deal with that decision?" That's the purpose of this particular amendment. It's hard to put these in context when you're trying to figure out whether or not the amendment has any real effect.

The other part is, in terms of Mr. Jackson's amendment, is that the form you want it in or are we going to see another form which is preferable to you and covers both sides?

Mr. Parsons: What we have prepared is a mirror image of this one that reflects it the other way, so that whether it be the adoptee or the birth parent who is told that their information is going to be disclosed, they will both be entitled to some time, that the information will not be disclosed that afternoon or the following day.

We think Mr. Jackson's suggestion that they need some time to deal with it emotionally or to deal with some physical things has great rationale to it, but we're going to add a mirror amendment that simply reflects the other side.

Mr. Jackson: Is that being drafted now so that we can deal with it?

Ms. Krakower: The amendments have been drafted, and they can be distributed now.

Mr. Jackson: They're not in the package that was tabled; this is on top of that?

Ms. Krakower: That's right.

Mr. Jackson: Are there any others besides this one?

Ms. Krakower: Not that I'm aware of.

The Chair: Can we have those copies then? Any other comments?

Mr. Sterling: I'd like to see the amendment.

Mr. Jackson: Can I ask a legal question, Mr. Chairman?

The Chair: Yes.

Mr. Jackson: I put the wording in here, "the board shall direct." Is that sufficiently clear?

Mr. Sterling: I find the word "shall" difficult. Presumably you're giving the board a discretion to either give time or decide how much time they give, and I would imagine it might vary from applicant to applicant. Is that your intent or is your intent to say, "You're entitled to 30 days," or "You're entitled to 60 days," before the effective decision takes place?

Ms. Lynn MacDonald: Mr. Chair, my name is Lynn MacDonald. I'm the assistant deputy minister for community and social services.

Mr. Sterling, the intent is to require the board to allow for a delay in this circumstance but not to dictate what the delay would be. What might be reasonable in the circumstances would presumably be taken into account by the board.

I'm not a lawyer; I'm sorry, I didn't give you legal advice on that.

Mr. Sterling: Perhaps legal counsel would want to help.

The Chair: Can you?

Ms. Hopkins: We're just numbering this.

Mr. Jackson: I intended it to be "shall." I just want to make it clear to everybody that in all cases where someone has been turned down, they have the right to have a delay. I don't think we need to be as prescriptive as to say that it should be three months or whatever; I'm satisfied that the right is there and that the board will act judiciously and we'll create a regulation alongthose lines. I just want to make sure everybody's aware this is an automatic right the way I wrote it. If your wishes are not acceded to by the board, that should give you an automatic right to a reasonable period of delay, that's all. It's automatic when it's "shall."

The Chair: They are coding these papers to make sure there's no confusion. Does anybody else wish to answer or comment while we're waiting for the next numberings?

Is there any other discussion? If there's none, I'll be happy to take a vote on this amendment. Are there any more comments on 21(j)? If there are no comments, we'll take a vote.

Mr. Jackson: I'm ready for the vote.

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

Mr. Sterling: This is a very confused process, so let's not pass something that we're going to have to come back to. I thought we were going to try to mirror this one with the government one. So what's the mirror?

Mr. Jackson: It's being drafted now. They're going to bring it over to me, and we're going to pass that next. We'll get this one done first, and then we'll move to the second one.

Mr. Sterling: Get which one done first?

The Chair: Motion 21(j), which was introduced last Tuesday.

Mr. Sterling: That's not the one that the government wants.

Mr. Jackson: The government—

The Chair: Excuse me. I am the Chair, and I have this on the floor. That's the one I can consider. If you want to amend it, you can, but the only one in front of me right now is 21(j).

Mr. Parsons: The 21(j) that we want to vote on, though, is intimately tied to another number of amendments. Our approval of 21(j) is contingent on the others passing, and I suspect it is for you also, that you want them as a package. I'm wondering if we could ask the clerk to make copies and distribute them before we vote.

Mr. Sterling: That's what I wanted.

Mr. Parsons: We don't do it easy.

Clerk of the Committee: We're working on 21(j). I've received a 21(j.1) from Mr. Jackson just now, and it has been distributed. I now have four new motions from the government: pages 8(b), 15(b), 21(j.2) and 21(j.3); I believe all or some of those are complementary to what we're discussing now. I'm going to have them copied and distributed.

The Chair: We'll wait until you've distributed them, and then we'll see what else we have to do.

The committee recessed from 1639 to 1646.

The Chair: I believe staff have provided the material we need. Therefore, I open the floor again for any comments on the item that we're dealing with, which is 21(j). I suspect there may be some amendments. The floor is open for any comments. Anyone?

Mr. Sterling: Could Mr. Parsons take us through this?

The Chair: Mr. Parsons, do you wish to assist?

Mr. Parsons: We have 21(j) that we're about to vote on. What we will be moving subsequent to that is 21(j.2), which basically gives the same process for delay to adoptive parents and, following that, 21(j.3) that gives the same rights for a delay in disclosure to birth parents.

The Chair: Thank you.

Can somebody let Ms. Churley know that we are in session? Thanks.

Mr. Jackson: So 21(j.2) is identical to 21(j)?

The Chair: Mr. Parsons, do you agree with that?

Mr. Parsons: Except that 21(j.2) and 21(j.3) are complementary to 21(j). There's 21(j.1) in between that has already been tabled. That is a separate one that is, I believe, Mr. Jackson's motion.

Mr. Jackson: So why is this in section 6? Because 48.4.2, 48.4.1—

Ms. Hopkins: I can help with that.

The Chair: Yes, staff can assist, please.

Ms. Hopkins: I can help with that. That's because it's an error.

The Chair: Thank you. It's nice to know.

Mr. Jackson: What should it be?

Ms. Hopkins: It should be section 8 of the bill.

Mr. Jackson: OK. Mine is 7.1; correct? So now we have the Liberals—

Ms. Wynne: Mr. Chair, I'm just wondering if we could all have this explanation, because actually we all have the same paper that Mr. Jackson has. So could we all have that explanation, please?

The Chair: OK. And of course we all have to adjust our motion, I suspect. So would you tell us what—

Ms. Wynne: I've got that this is an amendment to section 8 of the bill, "Exception (7.1)," and then on the new motion, it says "(6)". Could I have an explanation of that?

Ms. Hopkins: Mr. Jackson's motion, which is 21(j), makes an amendment to section 48.4 of the Vital Statistics Act. The motion numbered 21(j.2) makes an analogous amendment to section 48.4.1 of the Vital Statistics Act.

Mr. Khalil Ramal (London–Fanshawe): Which one is the correct number?

Ms. Hopkins: They're both correct. The underlying motion creates three kinds of orders. One order prohibits disclosure in order to protect an adopted person, the second order prohibits disclosure in order to protect a sibling of the adopted person and the third order is intended to protect the birth parent.

Mr. Jackson's motion makes an amendment in relation to the order that protects the adopted person—that's 21(j)—the motion 21(j.2) makes an amendment to the provision dealing with the order to protect the sibling, and the amendment numbered 21(j.3) makes an analogous change to the provision dealing with the order to protect the birth parent. It's an analogous amendment dealing with three separate orders; that's why there are three separate motions.

Mr. Sterling: So we have three: One is (j), one is (j.2) and one is (j.3).

Ms. Hopkins: That's right.

Mr. Sterling: And what is (j.1)?

The Chair: Mr. Jackson's motion.

Mr. Sterling: Yes, I realize that, but how does—

Ms. Hopkins: Motion (j.1) is a completely independent motion. It was just tabled with the committee in between.

Mr. Jackson: Yes, (j1). I'll speak to that in a minute.

The Chair: Those are all independent motions, so I'm assuming that we can deal, for instance, with the first one, 21(j)—we can take a vote on that—and then deal with the others. So what I have been saying can proceed at this point. Are there any more comments on 21(j) only? None? Therefore, I'm ready to call for the motion.

All those in favour of the amendment? Carries. Everybody supports it; 21(j) carries.

May I have the mover for 21(j.2)?

Mr. Parsons: I move that government motion 21, as amended, be further amended by adding the following subsection to section 48.4.1 of the Vital Statistics Act, after subsection 48.4.1(5):

"Exception

"(6) 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 adoptive parent to prepare for the disclosure and its impact on the adopted person's sibling and on his or her family and associates."

The Chair: Any comments?

Mr. Jackson: Again, because I'm not familiar with the other amendments you're tabling—I raised the question last week of how someone knows that they were the victim of an abuse, sexual, physical or emotional. How would the person know that? I've discussed the one with the adopted person; this is now the sibling, the progeny—in the worst-case scenario, an incestuous relationship. How, under the amendments you've tabled, are we going to be able to notify the individual on their 18th birthday that they were in fact a victim of abuse or sexual assault?

Mr. Parsons: Under other amendments, which we'll deal with today, the intention is that an individual who's a crown ward—realizing that most adopted people are crown wards—who has been brought into the protection of a CAS because of abuse, will have a caution registered against their birth record.

Mr. Jackson: Right.

Mr. Parsons: So they will have automatic protection against disclosure. They can choose to waive that, but they will have protection.

The birth parent could ask for a hearing, or whatever process is, decided, to have that overturned, and if that

were the case, the individual is informed that their history is one that spoke of abuse and that there has been a caution raised there.

Mr. Jackson: So just quickly, the onus is on the registrar general to flag the file?

Mr. Parsons: The CAS, at the time the child comes into care and then moves on to adoption, will have flagged the file, and the registrar general will then be aware of that, that there's a need to contact the CAS regarding this particular individual and the information is not automatically given out.

Mr. Jackson: I guess I'm asking you to comment on your future amendments. So you're going to give them an automatic right for a disclosure veto, but that can be appealed?

Mr. Parsons: Yes. The adoptee himself or herself could choose to waive that right or the individual seeking the information, the birth parent, could appeal to acquire the right to that information.

Mr. Jackson: So the crown ward can appeal to say, "Look, I want my information disclosed."

Mr. Parsons: Doesn't have to appeal; just says, "I want my information—"

Mr. Jackson: Fair enough. So they just have to notify the registrar that, "I waive any non-disclosure veto."

Mr. Parsons: Right. Exactly.

Mr. Sterling: In terms of that amendment that you're going to propose, as I understand it then, that if the adoptee would request the birth parents' identity, is he then going to be asked, "Do you really want this? Because there is some abuse indicated in your background." How are they going to handle it?

Mr. Parsons: The intention is that it go the other way, that when the birth parent would go to access the information, it would not be readily available to them—

Mr. Sterling: I understand the block there., but the block shouldn't be there for the adoptee necessarily.

Mr. Parsons: The adoptee would be told of the history, and they then have the option of saying no or yes.

Mr. Sterling: Before the disclosure?

Mr. Parsons: Before the disclosure, right.

Mr. Sterling: Is there any other amendment in our package that we haven't discussed yet vis-à-vis a woman who has been sexually assaulted and the adoptee applies? Is there any look at CAS records or the court's orders with respect to the fact that this woman was sexually assaulted and therefore there is a veto that she is entitled to?

Mr. Parsons: No.

Mr. Sterling: So you're doing it one way but not the other?

Mr. Parsons: That's correct.

Ms. MacDonald: Mr. Chair, if I may help Mr. Sterling. The other avenue, of course, does exist that was written into the bill in the first place, which was the indication that if an individual, including the birth parent, felt that harm might result to them, they could apply to the Child and Family Services Review Board for a prohibition in that instance. So if the woman had been sexually assaulted and had reason to fear that she might be in future, by release of the records, that's something she could take to the CFSRB.

The Chair: Mr. Parsons, and then I'll go to Mr. Jackson.

Mr. Parsons: If the adoptee is the result of incest or is the result of sexual assault from the parent, that doesn't make them a second-class person with fewer rights. The information they find may not be as pretty as they hoped it would be, but we believe they still have the right. Certainly the birth mother doesn't pose any threat to them, nor they to her.

1700

It comes back to the basic premise that we support, which is that they have the right to the information. There are numbers of individuals in this province who are children resulting from incest, but they didn't go through an adoption process. Just because that is their background, it doesn't diminish their rights compared to a child who was voluntarily placed for adoption. We don't believe there's a need to put a barrier there; there's not a risk to either party if contact were made.

Mr. Sterling: I understand that. I guess I'm just saying that a woman who has gone through that perhaps deserves more than one who hasn't gone through it. I'm trying to recognize a woman who would obviously have gone through much more emotional impact at the time than someone who had chosen to put up their child for adoption.

Mr. Parsons: If I look back on my personal experience with fostering, we've never fostered a child whose parents didn't love them. They may not have had the right parenting skills or behaved appropriately, but that doesn't mean they didn't love them. I believe that in this case, even given the difficult background, there is still love to go between the two parties.

Ms. Churley: I think you all know my views on this, but I'll reiterate them briefly. It is a reality; I'm not dismissing this, but isn't it sad that in this day and age, for the women we're talking about who were sexually assaulted, there's still so much shame associated with something that they had no control over? Lifting the veil of that secrecy and shame would be a good thing for all, while I recognize that for some people, unfortunately, that shame and the need to hide something that was done to them is still there.

Having said that, I would say that every adult adoptee has the right to their own information, and that if we're going to do this, it is wrong to discriminate against those few—yes, a minority of adult adoptees—because of the circumstances of their birth. That is what we'd be doing here: creating a tragedy out of another tragedy. Somebody who was born under these circumstances, relinquished in adoption—and we've heard from many adoptees, and we have heard from birth mothers who bore children out of those circumstances who wanted the information and the contact. We have heard from letters,

and from personal stories as well, the reverse. I would say again, that's why there is a contact veto.

Right now, let's be clear about this: Adoption orders prior to 1969 had the birth mother's full name on the adoption order. Perhaps it was different in private adoptions, but in CAS adoptions, adoptive parents would have had the birth mother's full name. The adoptive parents of most of the so-called children we're talking about—55 years old to 60, depending on the age of the mother—would have had access to that name. As well, these adoptees would have the same access to the so-called non-identifying information that one can get from CAS, which is what I got and which was how I found my son.

These kinds of searches are going on all the time, and some adult adoptees who were children of rape victims have gone ahead and used that information to locate their birth mothers, and vice versa. Some birth mothers have located their children from those tragic circumstances, and they tell stories of healing. But there are some, I know, who do not want the contact.

What would happen with this bill with a contact veto in there is that those few, that small minority, whose rights we do care about, will be more protected under this bill. There is a revolution in people finding each other now. We have to accept that as the reality, because it is happening. So this contact veto would in fact take care and deal with that concern about making an unwanted contact, but would at the same time allow the adult adoptee his or her right, just like every other adoptee, to get their own personal information.

Mr. Sterling: I just want to be clear about the contact veto that is there. I've asked legislative counsel this question, and her interpretation is what I'm going to say. She can correct me, if not. I understand that if a contact veto is asked for by the birth mother, that contact veto is between her and the adoptee. Although the penalties, I think, would never be instituted because of the nature of the relationship, notwithstanding that, the sanction is against the adoptee to contact the birth mother. The adoptee has no sanction against contacting the other children of the birth mother. They have every right to phone up their half-brothers or full brothers of the birth mother.

I hope everybody understands that, that it doesn't in any way protect the birth mother from the rest of the family, who may or may not have been told about this, from being contacted and the knowledge becoming quite commonplace in the family—aunts, uncles, whatever.

I think there's a lot of talk about how this contact veto is going to save harmless the relationships of a family, but that's bogus because basically the adoptee would want to, I think, contact their other siblings, whether they were half-brothers, half-sisters or whatever.

That's my understanding of it, Mr. Parsons: The contact is only between the adoptee and the birth parent who registers that contact veto.

Mr. Parsons: Mr. Sterling's right, and I quite frankly support it. It is, I think, a dark period, if we go back into history in Ontario, where families were split up and adopted out into a number of homes because it is somewhat of a challenge to find an adoptive home that can adopt three, four or five children. As an aside, the bill that was introduced today in the Legislature will help to make that happen.

I think it's a great thing that the siblings will be able to get together. I don't view it as a liability; I view it as a good thing—their brothers and their sisters. The birth parent may not wish, but I'm not aware of a sibling being unhappy about being contacted by a brother or sister—quite the opposite, in fact. I strongly support the ability of someone to contact a sibling.

Mr. Sterling: That's the purpose of this whole exercise, but you cannot deny that it's going to upset the birth parent significantly if she wanted to keep her family unit as it was. So we're not giving her any real protection in terms of the contact veto.

The Chair: Can I go back to Mr. Jackson, unless Mr. Parsons wants to answer? Mr. Jackson, then Mr. Ramal.

Mr. Ramal: I just want to follow up.

The Chair: OK. Then Mr. Ramal. Thank you.

1710

Mr. Ramal: I want to know how we can protect the birth mother and allow the adoptee to see the siblings and make connection with them without knowing about the birth parents.

Mr. Sterling: I don't think you can. In reality, how could you do it?

The other question I have here is: As I understand it, the records that an adoptee would be entitled to see, according to the legislation as we have it here, are the registration and what the registrar general has; there is no right in this legislation for the adoptee to see CAS files or the court documents where the adoption order was made. If that is the case, then how is the adoptee, who was obviously wanting to find out something about his birth mom, and he now knows who that is, and the only route to the father is through the mother—as I understand it, in 75% of the cases the father's name will not appear. So the whole idea of trying to prevent, if she filed the non-contact notice—aren't those two very counter-prevailing kinds of urges that are going to take place? She's going to say, "I don't want contact," and the adoptee is going to say, "The only way I can find out who my father is is through the natural mother." Is that not right?

Mr. Parsons: I think that's right. But the CAS files have a much different legal status than the birth registration or the adoption order, and contain, at times, speculation. They may contain individuals who phoned and made an allegation and believed they were entitled to privacy. If there is not a birth father's name on the birth registry but the information is given out through the CAS files, it makes it very difficult for the birth father to have filed a no-contact when they don't know they've been identified as the birth father. There are individuals who are not aware that that name has been put down. There are not the same rigorous standards for the files as there are for the birth registry; they're more anecdotal at times.

Mr. Jackson: That's the area that concerns me the most, Mr. Parsons, and it's the one I'm having difficulty with, because I fundamentally believe that an adoptee who has been removed from an abusive family situation—the mother's and the father's names, the birth parents, are there in most cases.

Mr. Parsons: Not necessarily. It may be the two individuals who were responsible for the care, but it may not necessarily be the birth father.

Mr. Jackson: Yes. We know there's a considerable amount of abuse from family and friends—an uncle and persons like that. I understand all that. But one of the defining features of an atypical file is that in cases where the child was abused by one or both parents, that would be contained in the CAS file and not necessarily detailed in the registrar's files. I raised this question last week as a matter of concern.

How does that individual know that they were removed from their parents because they were physically abused or sexually assaulted? I don't want to go off into the other ones like incest, which are a lot easier to understand and put in context. I just want to focus on an 18-year-old woman who doesn't know she was adopted until her 16th birthday, and now they've got to get over the next hurdle and tell her, "When I took you in as your new mother, you had 12 broken bones"—that kind of thing. I'm still not clear in my mind how we tell that individual—mind you, you did say earlier that you have made amendments from the packages last week that that individual now has an automatic right to a veto, and the abusive parent or parents have to appeal to the tribunal, which is essentially the amendments. I wouldn't give them any right of appeal, but that's a separate issue.

How does that individual get to know? Now I'm worried, Mr. Parsons: The CAS has a flag with the registrar, and the registrar now has that knowledge. How do we impart that to an 18-year-old woman who has just come of age, according to your regulation, if in fact you're going to hold on to the regulation that they have one year between their 18th and 19th birthdays to apply for the veto? I assume you're still holding on to that piece. Try to understand this part.

The Chair: Before you answer, I see Ms. Churley. Do you want to enter into the discussion, or should I get an answer?

Ms. Churley: This may help. If I understand your question, in the bill we have before us there is a problem. If this is what you're getting at, I have an amendment to deal with it, and I think the government does; I'm not sure whether you do or not. That's something we do have to cover, because as this bill stands right now, it repeals the right of adult adoptees and birth relatives to access that information under the CAS, which is a major problem. As we've already pointed out, the original birth registration and information doesn't normally include the father's birth name. In fact, it's excluded.

Although a lot of this information—names and things—has traditionally been blacked out, it is the information that gives a lot of the background. You're giving one right, which is to get the original birth information, and taking away the other right, which would be a disaster in terms of searching and adoptees finding out more about themselves in their search. That is a very valid and good point that we can hopefully address later in an amendment.

The Chair: Ms. MacDonald, would you like to add something to this?

Ms. MacDonald: I hope I can. I'm going to try to speak to two aspects of this. Mr. Sterling will recall that if the father is not named on the original birth registration, then the person who comes along and says, "I am the dad, and I want my child's record," will not be given that record by the ORG—I'm just looking for a correction from the ORG people back there.

The second point: How would the adoptee know they had been abused? Let us presume that the adoptive family has not informed the child. In this bill, the birth parent, who might be the abuser, is not able to access the child's record until the child becomes an adult anyway. The default position will be that if there is a record of abuse, which is checked through the CAS and the custodian, the parent can't get it, because there will be a prohibition on the file.

When the child comes of age, under the government's motion to amend, they themselves, when they applied for their record, would see that there was a flag on the file. They would be referred to the custodian, and the custodian would then say, "You were adopted from"—let's pick one—"the Halton CAS, and we advise that you go to the Halton CAS to have a conversation with them about the circumstances of your adoption." That would be the means by which the individual would have sufficient information to determine whether or not they wished either to continue with the prohibition in place or to instruct that there be a waiver of the prohibition on the record. I hope that helps with your question.

Mr. Sterling: I very strongly support the government's amendment on this, because it essentially is stronger than a disclosure veto. It's an automatic veto.

Mr. Jackson: Which is what we've tabled as our amendment.

Mr. Sterling: The child doesn't need to know to apply to the board for a disclosure veto because the veto is already on the record. It would only be in cases where it wasn't on the record at the CAS.

Mr. Jackson: However, part of that is to block the adult adoptee's access to their CAS records, and that's a whole other issue that I would hope we're able to—I've checked with the privacy commissioner. Their opinion is that they are a party to the agreement and should have access to the files. I hope we are going to allow them to have a look at their files. I know the difference between what's anecdotal, but we are dealing with serious issues around child welfare. It's a pretty substantive decision when a child is extricated from a family against the parents' will, which are the cases that concern me the most, as opposed to those who just simply say, "I don't want my child any longer." They are a little different from the ones that are concerning me the most here.

1720

The Chair: Is there any further debate on 21(j.2)? If there is no further debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Now we go to the next one, which is 21(j.3).

Mr. Parsons: I move that government motion 21, as amended, be further amended by adding the following subsection to section 48.4.2 of the Vital Statistics Act, after subsection 48.4.2(5):

"Exception

"(6) If the board refuses to make an order prohibiting disclosure of the uncertified copies, the board shall direct the registrar general to delay the disclosure for the period the board considers appropriate to enable the birth parent to prepare for the disclosure and its impact on him or her and on his or her family and associates."

The Chair: Is there any debate on this motion? If there is no debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

The next one is 21(j.1).

Mr. Jackson: I move that government motion 21, as amended, be further amended by adding the following subsection to section 48.4 of the Vital Statistics Act after subsection 48.4(7):

"Same

"(7.1) The order shall be presumed to be appropriate if the board is satisfied that the adopted person has been a victim of sexual assault, attempted sexual assault, violence or abuse or has suffered other emotional and physical harm."

The Chair: Any debate on this amendment?

Mr. Parsons: This may well be the appropriate wording to go in the regulation, but we don't believe it should be restricted as such and we prefer that regulations develop the criteria at that time.

Mr. Jackson: The reason I drafted this is because of the two occasions I raised the Victims' Bill of Rights in Ontario on the floor of the Legislature. The government has, for whatever reason, chosen not to respond. There are two sections of the act that deal with the rights of victims of a crime. A child, regardless of whether or not they have full legal status under the age of 18, is still a victim nonetheless. They are victims their entire life. Anybody who knows anything about rape survivors or incest survivors knows that these individuals carry that for the rest of their lives.

One of the things that offended me in one of the second- or third-round amendments that were tabled was the notion that the board only has to look at future harm and the potential for future harm. This disrupts a principle that is now entrenched in our laws. It was specifically put in there for women. It has an application for men, but disproportionately it's an issue for women, that they should not have to be re-victimized, nor should they have to live their lives in a fashion that puts them in harm's way as a result of opportunities to reconstruct contact.

I've had lawyers check this out. I'm going to quote from the act: "Victims should be treated with courtesy, compassion and respect for their personal dignity and privacy by justice system officials." There is no question in my mind. There is that section, and then the other section that was drafted in the original bill is the issue of civil proceedings on presumption: "The following victims shall be presumed to have suffered emotional distress." The presumption there is that they carry that for the rest of their lives and shouldn't have to go before a tribunal to prove that.

I'm not prepared to leave this outside in the hope the regulations will cover it. In fact, I'm trying to put the bill in a position that it might sustain a challenge. I honestly believe we're putting the bill's future at risk if we don't put that in.

I want to make it clear that there is a presumption that a veto is appropriate for a board when the abusive parent comes looking for their child if they are victims of sexual assault, attempted sexual assault, violence or abuse, or have suffered other emotional and physical harm, that this includes their experience as a child and isn't necessarily limited to the future potential harm that may occur. Even the media is picking up on this issue now, finally. I don't want to prejudge the minister, but I'm sure the minister—even though two newspapers have reported it—is not suggesting that the only cases are this sort of honour murdering that might occur for children who were born in a manner that is deeply disturbing to some cultural groups, the way she stylized it.

I don't think that general veto that was put in a week ago by the government goes far enough because the presumption in the minister's responses was that it's only in the future.

I don't want to lose the ground we've gained, especially for the victims' rights movement and the women's movement, in particular, in this area of law. When I've checked with various lawyers, this section will cover that. If a woman is not receiving the counselling that is required to get her through this, she carries this scar the rest of her life. I just firmly believe that should be made clear to the board, that they're obligated to respect the wishes of a victim that there be no disclosure if they have the least bit of concern with the fact that they were the victims of these various attacks on them.

That's why this was drafted and why legal counsel have analyzed it over the weekend with respect to the sections of the Victims' Bill of Rights, which this legislation, in its current form, is offending.

The silence of the Attorney General over the last two weeks since I raised it causes me even greater concern.

Mr. Sterling: I think this covers off the exception where in the CAS file there is not a record of the abuse. If the board is satisfied that there has been sexual abuse with other evidence, then I think Mr. Jackson's amendment takes into account that particular kind of case. I would strongly urge the government to support this amendment.

The Chair: Any further debate?

Mr. Jackson: Recorded vote.

The Chair: On a recorded vote, shall the motion carry?

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Parsons, Ramal, Wynne.

The Chair: The motion does not carry. I believe that will take care of all of section 8. I'm sorry, there are two more. Back to you, Mr. Parsons, for 21(k).

Mr. Parsons: I move that government motion 21 (replacing section 8 of the bill), as amended, be further amended by adding the following subsection to section 48.4.3 of the Vital Statistics Act after subsection 43.4.3(5):

"Access to board's own file

"(5.1) The board file respecting the application for the order under section 48.4, 48.4.1 or 48.4.2, as the case may be, is unsealed for the purposes of this section."

1730

The Chair: Any debate?

Mr. Sterling: Why are we doing it?

The Chair: Mr. Parsons, do you want to make any comments, please?

Mr. Parsons: There was a question, I think, from Mr. Sterling last week and once again we said, "You're right."

Ms. Krakower: This is in a case where the board is reconsidering a decision allowing the documents to be unsealed.

The Chair: You got the answer, I believe.

Mr. Sterling: No. Basically, it goes with the other section, which says that no person may open the file.

Mr. Parsons: Right.

Mr. Sterling: Is that section still there or is it coupled with it, or does it do away with that section?

The Chair: Staff?

Ms. Krakower: I'm not sure. This is in a situation where the board would want to reopen the file when a person is coming forward to either ask that the board reconsider that they remove the order prohibiting disclosure or when the other party is asking to be heard. This would allow the board to actually open up the file and see on what basis the decision was made initially.

Mr. Parsons: The section is still there, but this provides an exemption in case of an appeal.

Mr. Sterling: Can I ask legislative counsel, shouldn't there be any "notwithstanding" the other section?

Ms. Hopkins: No, it doesn't need to.

Mr. Sterling: OK. That's fine.

The Chair: Any further debate? I shall now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Mr. Parsons, 21(l), please.

Mr. Parsons: I move that government motion number 21 (replacing section 8 of the bill), as amended, be further amended by adding the following sections to the Vital Statistics Act after section 48.4.3:

"Prohibition against disclosure where adopted person a victim of abuse

"Definitions

"48.4.4(1) In this section,

"'children's aid society' means a society as defined in subsection 3(1) of the Child and Family Services Act;

"'designated custodian' means a person designated under subsection 162.1(1) of the Child and Family Services Act to act as a custodian of information that relates to adoptions.

"Request by registrar general

"(2) Upon receiving an application under subsection 48.2(1) from a birth parent of an adopted person, the registrar general shall ask a designated custodian to notify him or her whether, by virtue of this section, the registrar general is prohibited from giving the information described in subsection 48.2(1) to the birth parent.

"Exception

"(3) Subsection (2) does not apply if a notice of waiver has been registered by the adopted person under subsection 48.4.5(1) and is in effect.

"Determination re method of adoption

"(4) The designated custodian shall determine whether the adopted person was placed for adoption by a children's aid society.

"Request for determination by local director

"(5) If the adopted person was placed for adoption by a children's aid society, the designated custodian shall ask the local director of the society to make a determination under subsection (7) and to give written notice of the determination to the designated custodian.

"Notice to registrar general

"(6) If the adopted person was not placed for adoption by a children's aid society, the designated custodian shall give written notice to the registrar general that the registrar general is not prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

"Determination by local director

"(7) Upon the request of the designated custodian, the local director shall determine whether, in his or her opinion, based upon information in the files of the children's aid society, the adopted person was a victim of abuse by the birth parent.

"Same

"(8) The determination must be made in accordance with the regulations.

"Notice to registrar general, no abuse

"(9) If the local director notifies the designated custodian that, in his or her opinion, the adopted person was not a victim of abuse by the birth parent, the designated custodian shall give written notice to the registrar general that the registrar general is not prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

"Same, abuse

"(10) If the local director notifies the designated custodian that, in his or her opinion, the adopted person was a victim of abuse by the birth parent, the designated custodian shall give written notice to the registrar general that the registrar general is prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

"Application for reconsideration

"(11) The birth parent may apply to the Child and Family Services Review Board in accordance with the regulations for reconsideration of the determination made by the local director."

Ms. Wynne: I'm going to read the rest.

The Chair: Yes, proceed. It's a long one.

Ms. Wynne: "Reconsideration

"(12) The board may substitute its judgment for that of the local director and may affirm the determination made by the local director or rescind it.

"Same

"(13) The board shall ensure that the local director has an opportunity to be heard.

"Procedural matters, etc.

"(14) Subsections 48.4(4), (10) and (11) apply, with necessary modifications, with respect to the application for reconsideration.

"Notice to registrar general

"(15) If the board rescinds the determination made by the local director, the board shall notify the designated custodian that, in the opinion of the board, the adopted person was not a victim of abuse by the birth parent, and the designated custodian shall give written notice to the registrar general that the previous notice to the registrar general is rescinded.

"Information for birth parent, adopted person

"(16) If the local director determines that, in his or her opinion, the adopted person was a victim of abuse by the birth parent, the local director shall, upon request, give the birth parent or the adopted person the information that the local director considered in making the determination, with the exception of information about persons other than the birth parent or the adopted person, as the case may be.

"Administration

"(17) Subsections 2(2) to (4) do not apply to notices given to the registrar general under this section.

"Notice of waiver by adopted person

"48.4.5(1) Upon application, an adopted person who is at least 18 years old may register a notice that he or she waives the protection of any prohibition under section 48.4.4. against giving the information described in subsection 48.2(1) to his or her birth parent.

"Same

"(2) A notice described in subsection (1) shall not be registered until the applicant produces evidence satisfactory to the registrar general of the applicant's age.

"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.

"Withdrawal of notice

"(4) Upon application, the adopted person may withdraw the notice.

"When withdrawal takes effect

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

"Administration

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

The Chair: Any debate?

Mr. Sterling: Do you have any idea how many files this would apply to?

Mr. Parsons: I don't. Ms. MacDonald?

Ms. MacDonald: As of this morning's statistics, it said that 16% of total adoptions are through private adoptions, so the balance would apply to all CAS adoptions. As of quarter three of the 2004-05 fiscal year, there were 98 domestic adoptions in Ontario and 515 CAS public adoptions.

Mr. Sterling: This section deals with kids that have been abused. Can you give me any kind of thumbnail? I'm not going to hold you to the number, but I'd like to have some kind of estimate.

Ms. Krakower: What I can tell you is that based on the experience of other jurisdictions in Canada, the majority—about 80%—of the applicants looking for identifying information are adoptees, leaving about 20% as birth parents. Of that 20%, I would imagine that the number of actual cases where there's abuse would be relatively small, but I don't have a figure.

Mr. Sterling: I guess the question is that you can look for the answer the other way, and that is, of the CAS adoptions, how many involved abusive parents as opposed to other situations? Do you have any idea, Ernie?

Mr. Parsons: I'm going to give you a best guess. I think the percentage of CAS children placed for adoption that have had some violence in their background is increasing, not because there are more parents doing the abuse, but there are more birth mothers choosing to raise their child or to do private adoptions. If I go back 26 or 27 years ago, there were significant numbers of people who gave their child for adoption through the CAS. There was no history of problems, no problem at all. But now I think the percentage that have been brought into care for their own protection is probably slightly increasing every year as a percentage of children placed for adoption.

1740

Mr. Sterling: I'm still trying to get the number. I hear there are 500 to 600 adoptions a year, maybe 700. How many of those would involve CAS cases where there would have been abuse of the children?

Mr. Parsons: I couldn't guess that.

Ms. MacDonald: I did ask that question this morning, Mr Sterling, of my colleagues at the Ministry of Children

and Youth Services, and they were unable to give me an answer on the spot. They said they would have to go back and do a file crawl of all of the adoptions in CYS. I'm sorry.

Mr. Jackson: I have some questions about this amendment, but could you not sort of take a medium-sized CAS and ask them to do that exercise, so that you've at least got a ratio within that? I guess what we're getting at here is how much work is going to be involved in terms of flagging the files, and then there's going to be a huge rush of adoptees who are 18 and older who are going to be immediately eligible under this section. We're just trying to get a sense—if we're dealing with thousands of individuals here, then those files will all have to be reviewed individually?

Ms. MacDonald: I'm going to ask to my colleague Ms. Krakower to add, but in the motion to amend that the government has introduced, we are proposing to proceed on the basis of the application by the birth parent, so that would trigger the assessment of the case. It wouldn't be all 250 sealed paper files and all the electronic files up front. It would be upon the application of the birth parent that the exploration with the CAS would trigger.

Marla, do you want to add anything?

Ms. Krakower: That's exactly what I was going to say. It's going to be done on a case-by-case basis, as birth parents apply for the identifying information.

Mr. Jackson: OK. Well, it makes sense to me that you're going to do it that way, but I'm still not 100% sure how they're going to know that they're a subject of an application. You're not envisaging notifying the adult adoptee that their parent is seeking disclosure?

Ms. Krakower: No. However, when the adult adoptee would come forward, if they came forward with a request for identifying information about the birth parent, at that point there would be a flag.

Mr. Jackson: This sounds pretty benign, but at what point does the adult adoptee figure out that nobody's seeking out information on her? Is that how she realizes that she might have been a case of abuse?

Ms. Krakower: I think the adult adoptee would—I'm not sure what you're getting at.

Mr. Jackson: The adult adoptee—no one is notifying her that she was abused as a three-year-old?

Ms. Krakower: If the adult adoptee goes forward requesting their identifying information—

Mr. Jackson: Then they're told.

Ms. Krakower:—from the ORG, at that point they're told that there's a prohibition on their file with respect to their birth parents.

Mr. Jackson: But then they can look at their file.

Ms. Krakower: And then they would be able to go and retrieve some information from their file from the CAS with respect to the basis on which the decision was made to put the prohibition on the file.

Mr. Jackson: OK. Could you tell me who you consider to be a "designated custodian" in subsection (2)?

Ms. Krakower: The designated custodian is referred to in other sections of the bill. Do you want me to speak to that?

Mr. Jackson: I just want to be reminded who we're talking about here.

Ms. Krakower: The designated custodian is a body that would be responsible for collecting, disclosing and using information with respect to adoptions. The details of who that body would be will be outlined in regulation.

Mr. Jackson: So this is separate from your current department, which is being phased out?

Ms. Krakower: Yes.

Mr. Jackson: Remind me again why we're phasing out your department.

Ms. Krakower: One of the primary functions of the adoption disclosure unit is to conduct searches.

Mr. Jackson: Right.

Ms. Krakower: With this bill, the adult adoptees and birth parents will be able to apply to the ORG for their identifying information and, with that information, they will be able to seek each other out.

Mr. Jackson: What kind of department are we going to be left with being the designated custodian of these—what are they the designated custodian of?

Ms. Krakower: The main purpose of the designated custodian is to fulfill some of the functions that have been provided with respect to the provision of non-identifying information, in particular in relation to private adoptions.

Mr. Jackson: OK. So we're really talking about civil servants here?

Ms. Krakower: Not necessarily.

Mr. Jackson: No? Would you farm this out? Would you contract somebody to do it?

Ms. MacDonald: If I may.

Mr. Jackson: The deputy minister's going to come in here and fix this.

Ms. MacDonald: You just promoted me.

Mr. Jackson: Assistant deputy minister, sorry.

Ms. MacDonald: Thank you, sir. I thought I'd gotten a promotion there, but I suddenly lost it again.

Mr. Jackson: Take the compliment.

Ms. MacDonald: It is intended that the custodian could be a government body. It could be an administrative authority of government, such as the many administrative authorities that exist, for example, within the general ambit of the Ministry of Consumer and Business Services or it could be some other kind of corporate body that would be created by the government. The intent is that that body would collect, use and disclose information, collect and disclose non-identifying information for adoptees, birth parents and possibly other birth kin. That could include court documents, family history information collected at the time of adoption, home reports conducted by a CAS social worker, etc.

So it could be quite a broad base of information. Much of that information or similar information does exist within the adoptions disclosure unit within community and social services now. Other information might be

added to that, and we do have an amendment to allow the custodian to also conduct searches similar to the kind of searches conducted within the ADR right now.

Mr. Jackson: I'm trying to understand why you'd be collapsing one instead of refashioning it. There are five or six known reasons why governments do that: One option is, of course, so that you can create a new fee-charging regimen; another is to secure highly sensitive documents to save any potential liability; or another is to thin the ranks of the civil service. I don't find all three very appetizing, to be honest with you.

OK. So this designated custodian is now the one who would inform the birth parent that they will not have access, and they'll also be the person to tell the adoptee who applies—

Ms. MacDonald: No, sir. The custodian would obtain the information from the CAS as to whether there had been abuse in the case involved. The custodian would then instruct the Office of the Registrar General to not release the record and the Office of the Registrar General would decline to release the record and advise the person that there had been a denial to release.

Mr. Jackson: In subsection (12), "The board may substitute its judgment for that of the local director"—so we're talking the CAS here—"and may affirm the determination made by the local director or rescind it." Why would you allow the board to override the local director if he is satisfied that there was abuse?

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Ms. Krakower: This refers to an instance where there has been a determination by the CAS, based on looking at the files, that there is abuse and the ORG is informed that the prohibition should remain, but the birth parent, upon trying to access information, decides that they want to apply to the child and family services board for a reconsideration. At that point, when they apply for a reconsideration, if the board has a look at the file and determines that in fact the birth parent is correct and there was no instance of abuse, based on the file, then their decision to take the prohibition off would substitute the original decision by the children's aid society.

Mr. Jackson: Then, in paragraph 13, you give the right to the local director to have an opportunity to be heard. You've now questioned his or her professional judgment. That's because you've reviewed his decision, as a board.

Ms. Krakower: I don't interpret it that way. I'd interpret it as their having an opportunity to explain on what basis they made that determination initially.

Mr. Jackson: It doesn't say what the board's obligation is to the director. It just says they will give the local director an opportunity to be heard, which means he gets to defend his decision. That's a professional courtesy in government, and it's understandable, which brings me to, where do we allow the adult adoptee to have the same right?

Ms. Krakower: This gets back to the situation that if the adult adoptee were part of this proceeding, it would defeat the purpose of having the prohibition on disclosure, because in that case their identity would be revealed. That's the reason for not having the adoptee as a party to this proceeding.

Mr. Jackson: I understand that. You've got a director from the CAS saying, "Look, we believe there was a prima facie case of abuse." You now have the board second-guessing it and saying, "Do you know what? We don't think so. We've looked at the file, and we disagree." You allow the director to come in. All this is triggered because the birth mother or birth father says they want access to the records. Now I'm at that point with you, and you're at that point with me. How do you now tell the adult adoptee that the veto that was there is about to be removed? What happens now?

Ms. Krakower: In that case, if the adoptee feels that they would be harmed by having the information disclosed, they can then apply to the Child and Family Services Review Board for an order prohibiting disclosure, based on a perception that they would be harmed.

Mr. Jackson: Next question: In (15), why do we say "birth parent"? Is that presumed to include both parents?

Ms. Krakower: Only in a situation where there's evidence that both parents were involved in the abuse.

Mr. Jackson: Does "birth parent" in this section mean both the mother and the father?

Ms. Krakower: Not necessarily.

Mr. Jackson: That's why it tripped in my mind—I've got to ask some questions. So abuse can occur from either parent, correct?

Ms. Krakower: It could.

Mr. Jackson: The CAS, in the files that I'm aware of, would actually indicate that there was negligence on the part of the mother, who failed to protect the child. That appears in files. When you talk to women survivors, they will tell you their resentment was as much at their mother for not protecting them as at the father who attacked them.

I need to understand, before I approve this, how we're covering off any and all situations, and I'm not comfortable with that wording.

Ms. Krakower: The definition of "abuse" will be dealt with in regulation.

Mr. Jackson: I'm not comfortable with that either. According to a literal reading of this, it's "was not a victim of abuse by the birth parent."

Ms. Krakower: Right.

Mr. Jackson: I'm just asking you if that includes both parents or one parent.

Ms. Krakower: Well, it would depend on which parent was applying for information from the ORG. That would be the parent to whom this would apply.

Mr. Jackson: OK. So now it's possible for the mother to apply but not the father?

Ms. Krakower: That's right.

Mr. Jackson: The mother is applying because she wasn't the subject of the abuse. Maybe she was the subject of negligence, but we'll leave that aside for the moment. Is it possible, under these amendments, that the

application from the mother would be allowed to go forward because of the Catch-22 that she wasn't actually the perpetrator?

Ms. Krakower: She wasn't the perpetrator, but it was the birth father who was the perpetrator? I guess I'd go back to my comment that the definition of "abuse" will be fleshed out further in regulation.

Mr. Jackson: I'm really having a hard time with that. I'd rather it be a lot clearer here that the adult adoptee who is given the right in this section to have a disclosure veto have the right to say, "I'm willing to be contacted by my mother or my father separately or independently," as opposed to the mother coming in and winning her argument in front of the board by saying, "Look, I was just an innocent bystander. I had no idea that my husband was doing this to my daughter." I'm very uncomfortable with that. I still want the adult adoptee to be empowered with the determination as to whether or not they're exposed. The way this is worded, they're not protected in that way.

Ms. Krakower: At any point, the adult adoptee can waive the prohibition and allow for that disclosure of information to the birth parents.

Mr. Jackson: No, not from what—if I'm listening to you carefully, there's a clear difference between how the board would look at an application from an abusive father and a non-charged abusive mother, but the child was nonetheless removed from the family—the mother may have been guilty of negligence. I'm very uncomfortable with that wording. But if you're saying that it was written specifically not to limit access for the non-offending mother, if we keep with my analogy here, I'm having trouble with that.

The Chair: Can I get somebody else involved in this discussion?

Mr. Jackson: Sure. I just need some comfort here, because I don't think that's what we intend here.

The Chair: Ms. Wynne, were you going to suggest something to Mr. Jackson?

Ms. Wynne: Actually, I'm just looking at the clock. I have a sort of procedural matter that needs to be dealt with. Is Mr. Jackson going to continue? Sorry, I'm just not sure.

The Chair: There is a motion on the floor, and Mr. Jackson has the floor. I would like to address that motion before I take any other motion.

Ms. Wynne: OK. I just wanted to raise the issue with the committee that I do have a procedural issue regarding a document that was released to us, and I do have a motion. I'd like to have a chance to move that today, if possible.

The Chair: Mr. Jackson has the floor.

Mr. Jackson: Can staff confirm that this is a partial disclosure veto when it involves two parents?

Ms. Krakower: It's not a disclosure veto. This is a prohibition against disclosure where an adopted person was a victim of abuse.

Mr. Jackson: I understand that, but you're saying that the board can come in and say to the CAS, "In spite of your advice, we think we should release the information. We should waive this for the adult adoptee and say, 'Sorry, but we're going to release it to the mother. We're just not going to give it to the man she's living with'"?

Ms. Krakower: I think that some of this will be dealt with in regulation, if it's getting at the definition of "abuse." We are planning to consult extensively on the regulation, including a regulation that would pertain to this section.

Mr. Jackson: It's not the definition of "abuse" that I'm having difficulty with; that isn't going to be very hard to craft. I'm having difficulty with the fact that both parents have lost this child for good reason in the cases we're discussing, and I'm anxious to make sure that there is a right for the victim here, the adult adoptee, to be protected from disclosure to either of the parties.

Again, it's only from listening to women who have said, "That was my dad." I'm not rationalizing it, but the real resentment was with the mother who didn't protect her. You're familiar with this concept.

I'm really having a hard time with this section. We're running out of time for me to amend it, but we're not going to pass this whole section in case I wanted to do an amendment to it.

Ms. Krakower: This section is intended to address a situation of abuse, not something else, not a parent who stood by; it's to specifically address a situation where a birth parent was a perpetrator of abuse.

Mr. Jackson: Again, I've asked you that question: There are two parents, and one was the abuser according to the records. This allows the board to rescind the advice, the professional judgment of the CAS, in order to make—the purpose, now that you've explained it, is in the event that they want to say no. We'll continue to bar the father, the perpetrator, but we'll leave his wife, the birth mother; she'll have access to the information. It is possible, where they're both living together, that one will have the information and the other won't. That's my point.

I'm really, really uncomfortable with that. I very much appreciate that the government has made a major move here for something I've been calling for for months, but I am a little nervous. This is the only section in here now that is causing me some grief, because it's possible that you're going to tell the mother but not the father.

Ms. Krakower: I think, again, some of this will be fleshed out in the regulation. I don't have anything further to add.

Mr. Jackson: I'll check with legal counsel, because we're not going to close off this section, and it might be the subject of a further amendment.

The Chair: I thank you, Mr. Jackson. I think Ms. Wynne wants to say something.

Ms. Wynne: I understand, Mr. Chair, that I can't move a motion as there's a motion on the floor, but I just wanted to raise an issue. There was a document that was released to the committee, and we all received a memo, I believe, on May 30. It was a document that was released through the Attorney General's office, dated December

10. That document was released in error. I'm looking for consent around the table that that document not become part of the committee's record and that it not be part of the committee's file. Is that agreeable?

The Chair: Do I have unanimous consent on that?

Mr. Jackson: No. I won't give you unanimous consent to that. There's a motion on the floor. Unless you want to adjourn and we'll come back tomorrow and we'll continue.

Ms. Wynne: I'll raise the issue next time, then.

The Chair: Mr. Jackson is correct. There is a motion on the floor that we should address. That was more information. It has been requested by the clerk that she get direction on what to do. There is not unanimous support, which means that you don't have that direction.

It is after 6. I will adjourn today's meeting, and we'll come back to the same room tomorrow about the same time to continue on the same section. I thank you all for your participation. We'll see you tomorrow.

The committee adjourned at 1805.

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Also taking part / Autres participants et participantes
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Ms. Marla Krakower, manager, adoptions disclosure project,
Ministry of Community and Social Services

Clerk / Greffière
Ms. Anne Stokes

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Ms. Laura Hopkins, legislative counsel