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Mardi 7 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

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 7 June 2005

Mardi 7 juin 2005

The committee met at 1542 in committee room 1.

ADOPTION INFORMATION DISCLOSURE ACT, 2005

LOI DE 2005 SUR LA DIVULGATION DE RENSEIGNEMENTS SUR LES ADOPTIONS

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

The Chair (Mr. Mario G. Racco): Good afternoon and welcome again today. We will be discussing Bill 183. We will resume our clause-by-clause consideration.

Yesterday we adjourned while debating the government amendment on page 21l. Is there any debate on the motion, Ms. Wynne or Mr. Parsons? None. Is there any debate on the motion from anyone?

Mr. Cameron Jackson (Burlington): I have a technical question. What's the status of government motion 21, which is 21, 21a, b, c and d?

The Clerk of the Committee (Ms. Anne Stokes): It's the main motion at the moment. The motion we're debating is an amendment to that motion. It's been amended already, so it's an amendment to the motion, as amended.

Mr. Jackson: But 21 says sections 48.4 to 48.4.3, so this one becomes the addition to—

The Chair: That's right.

Mr. Jackson: I was contacted last night by a group of concerned persons who are also affected by the legislation who were questioning—I'm trying to look for the reference in either of the two sections that deal with the words "crown ward" anywhere. Is there any reference in that? Am I not seeing this correctly?

Ms. Laura Hopkins: No. The expression "crown ward" isn't used, and "ward of the crown" isn't used. I believe the expression that's used is "adopted person placed for adoption by a children's aid society."

Mr. Jackson: OK. That is in both 21e or 21l, whichever that is. Is it stated in there specifically, as well as in 21?

Ms. Hopkins: I don't think it's referred to in 21.

Mr. Jackson: Where is it exactly?

Ms. Hopkins: In motion 21l, if you look at the first subsection on the second page, which is subsection (4), it refers to "adopted person was placed for adoption by a children's aid society." The next subsection also refers to that. The next subsection refers to "adopted person" who "was not placed for adoption by a children's aid society."

Mr. Jackson: OK. Let me ask this question on subsection (7). This is what these families were asking me about. Why do we say "was a victim of abuse by the birth parent"? Are we going to be eliminating all or any cases where someone has been put up for adoption and taken away from their birth parents or parent, but where the abuser might have been a live-in boyfriend or a known acquaintance and the mother refused to separate herself from the acquaintance? There's still the issue of abuse here.

What has been brought to my attention is that the definition of "abuse" specifically refers to physical abuse. I'd like to ask the question why we're not considering other aspects of childhood trauma that include, to use an example given to me, a one-year-old girl whose birth father is a violent drug addict listed on the sex offender registry. He may not have physically assaulted his own child but was deemed to be a threat to children by others. In that case, according to this amendment, that child would not be protected as an adult adoptee.

Another example that was shared with me was that of a three-year-old boy who witnessed his birth mom stabbing the birth father 15 times. Again, I get back to the issue: At what point do we let the child know that that's what they experienced in their trauma? More importantly, I would take it from these amendments that those children are not captured in the legislation. Could I perhaps get an answer to that?

The Chair: I can ask staff to respond. Ms. Churley, can I get an answer first, or do you wish to—

Ms. Marilyn Churley (Toronto–Danforth): You can get an answer first.

The Chair: Can staff respond, please?

Ms. Marla Krakower: Similarly to what we were saying yesterday, the definition of "abuse" is something that would be covered in regulation and would be fleshed out in consultation with stakeholders. At this point, we don't have a definition of "abuse." Your question is: Would there be any way of defining that somebody who witnessed violence between two parents was abused? Perhaps. Perhaps there would be emotional abuse.

Mr. Jackson: I'm still asking the point as to whether or not they're captured in this amendment, because it

refers to victims of "abuse by the birth parent," as opposed to children who were found to be in need of protection.

Ms. Krakower: You're correct that the whole group of crown wards is not covered under this amendment. It is a subsection of that group of crown wards: the ones who would have experienced abuse.

Mr. Jackson: You're aware that I have an amendment that covers all crown wards?

Ms. Krakower: Yes.

Mr. Jackson: And your position is that crown wards don't need that protection? That's the way you've drafted it.

Mr. Ernie Parsons (Prince Edward–Hastings): For children's aid societies, not all but almost all children become crown wards. They become crown wards when they fall under the care of the CAS and are then placed for adoption. They may become crown wards because the birth mother chose to voluntarily place them into care. The phrase "crown ward" does not imply that they automatically need protection; far from it. The concern is not, I believe, children who were crown wards but children who were victims of abuse or who witnessed abuse or whatever. We don't support "crown ward," because it is too broad.

Mr. Jackson: I'm going to be amending it so that it covers what I think I just heard you say, which is crown wards who were found to be in need of protection. That would be included in their file. When I listened carefully to the answers to my questions—I got quite a few of them answered satisfactorily, so I thank you for that—we're now asking the director of a children's aid society to go into that file to make an evaluative decision in terms of whether they were in need of protection from a set of circumstances and from individuals who may or may not be their birth parents.

1550

Mr. Parsons: But there are children who have been placed for adoption by CASs that never became crown wards.

Mr. Jackson: Fair enough, and that's a challenge we can—

The Chair: Can I get Ms. Churley in on the discussion, please?

Ms. Churley: First of all—Mr. Parsons dealt with the first part—as a birth mother who was forced to sign away my child and give the child away and relinquish all contact with that child, I have, and perhaps you won't take this personally, some distaste for a conversation that includes me and the majority of other young mothers who, by no choice of our own, and for many reasons, did the best thing for our children, being lumped in with child abusers.

Mr. Parsons: I hope that's what I said.

Ms. Churley: Yes, you did, and I appreciate that. I'm just getting tired of hearing that over and over again. I understand, Mr. Jackson, what you're trying to do here, but let's be careful, because that's the way the system worked. The majority of those of us who gave up our children had no choice but to sign them over and relinquish our parentage over these children. But we were not abusers; in fact, we gave them up in love.

Having said that, the second piece is around trying to protect children who were taken because of potential or real abusive situations. I think that they're good questions, but I also think you can only go so far in trying to protect adults. We're talking about adults here. Mr. Jackson, when you mention things like—it makes me cringe—the mother may have stood by and allowed some abuse to happen, and that therefore the adult adoptee may be resentful because there's some evidence that the mother stood by and watched this happen—she may have been abused herself. There are all kinds of circumstances that we don't know about that happen in families and that we really don't have control over, but that is also true of "normal" families—I put that in quotations—biological families. The things that we know are quite devastating. The things we don't know that children have to endure within their birth families can be just horrendous at times.

At the end of the day, we're talking about adults who have to make some choices for themselves about what they want to know and what they need to know. I also have to contend that in many, many cases, if you read reports of adults who have found birth parents and have found circumstances that may have happened to them that they didn't know about but they've had problems in their lives because of deeply buried memories or whatever, it can be very healing. Adult adoptees have to make those kinds of choices at some point in their lives, but we can only go so far in terms of protecting each and every aspect of adults who were removed as children from perhaps abusive situations.

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

Mr. Jackson: I yielded in order to listen to the contributions.

I don't want to protract this by engaging in a debate, but Ms. Churley's compelling arguments give rise to the issue as to why only one jurisdiction on the planet actually does it this way. I'm not for a moment suggesting that this is an easy piece of legislation and that it can have simplistic solutions. I share that view about amendments that are all-encompassing. I have to make decisions as a legislator in terms of those groups of individuals who've contacted me who have concerns.

I'm just trying to write up what the impact would be if we amend subsection (7) so that, based upon information in the files of the children's aid society, the adopted person was found to be in need of protection. That would cover abuse. I can't imagine a case of a children's aid society taking a child out of a sexual abuse situation and not making them a crown ward first.

Mr. Parsons: There are children who are brought into the care of a CAS in need of protection, but the need of protection may be "unable to parent;" they're not abusive, but they're unable to parent. Or there used to be a phrase called "failure to thrive," which is pretty general. I would suggest that where families have, in years past,

had great financial difficulties—I suspect that if we go back in history, there were children removed because families were unable to afford them. I would believe that those individuals, as adults, would not be at risk to have contact with the birth parents. It was not a wilful act, as such, and so I would not support that amendment because I think it is too generic and doesn't recognize all of the reasons that children came into the care of a CAS.

Ms. Churley: I just want to make two quick points—

The Acting Chair (Jeff Leal): Mr. Jackson, were you finished?

Mr. Jackson: I don't want to jump to an amendment until we've discussed it, and I think that's fair if we do that in the process.

The Acting Chair: Ms. Churley, please, then.

Ms. Churley: Just two quick points. The first, as I've pointed out many times, as have members of the adoption community—Mr. Jackson, you've been involved in this issue for a long time, so I'm sure you're aware of it as well. If you look at other jurisdictions, you're talking specifically about Canada, the provinces, that also have disclosure vetoes as well as contact vetoes, but as I've pointed out before, England, Scotland, New South Wales and some American states have just contact vetoes; some have no-contact vetoes or disclosure vetoes. So to point out again, it's not like we're reinventing the wheel here and these things haven't happened.

The second point I wanted to make was—I didn't write it down and I forget it. So there you go. But that was one of the key things I wanted to say. Oh, I know what it was: Yesterday I went to the announcement by the children's minister; Mr. Parsons was there as well. There was a young man there who had been just recently adopted, but he was very open about the fact that his mother is schizophrenic, and there have been a lot of issues and problems and she cannot care for him—that relates to what you were saying, Mr. Parsons—and he understands that and knows that. He loves his mother and he wanted to make sure, when he was adopted, as opposed to just being in foster homes, that he would be allowed to have contact with that mother, to always know that she's OK and to allow her to know that he's OK. I just wanted to point out once again—and I think, Mr. Jackson, you too alluded to it—that these can be very complex and difficult situations, and we have to be careful not to box ourselves in to the extent that people like that don't have the kind of access that they may need in their lives on either side.

I'm not disagreeing that we have to try to protect people, but we have to look at all angles and all sides to this.

Mr. Jackson: The initial concern I had was that crown wards who were in need of protection, for a broad range of issues, should have a disclosure veto. The government has decided, and I appreciate the fact that there's significant movement on the part of the government, to consider the position put forward by our caucus. However, what was tabled yesterday talks about a fairly subjective process with a third party, herein referred to as the designated custodian, who is presumed to have access to records which identify an adoptee and who then is required to contact the children's aid society and ask one of its senior people to review the file to determine if this individual was a victim of abuse and that that abuse, according to the regulations, is sufficient to uphold the bar on the access to the disclosure.

So we already have a process that is highly subjective and regulatory. I'm merely introducing to the committee the notion that, in its current form, it's too narrow to catch some children who will be adult adoptees at the time they'll be approached who, in my opinion and that of my caucus, should have this veto right or at least the opportunity to have a third party review it to concur that they need some protection.

1600

Do I think that the children's aid society is going to review a file, two examples of which Ms. Churley just shared with us? No, I don't think so. I think that one will be waved right through. I think they'll just simply say, "There's no bar on this." But I'm worried that we're going to have gaps in this thing because we don't have a broadly enough defined definition in legislation. As someone who has sat at the cabinet table, as Ms. Churley has—the regulations can't deviate from the legislation. They have to uphold what's stated here.

The families who contacted me last night gave very compelling testimony about the cases. I have many more. I think the committee gets it. There's nothing served by my going over dozens of cases or examples that aren't hypothetical; they're specific ones. I had one late in the day yesterday. One of the reasons I'm going to change (7) is because the records of a CAS for a woman I talked to was that her foster parent abused her. That sits at the seat of one of the major concerns we have in the province, that CASs will be liable for some of these issues at some point down the road. We hope that there isn't a lot of litigation that occurs from access to these reports. Having said that, clearly that woman came to me last night and said, "I'm not covered under this legislation, because my foster parent sexually abused me." They're not covered under this, I don't believe.

I'm getting a look. Please—

Ms. Lynn MacDonald: I'm not sure that this addresses directly where you're going—

Mr. Jackson: It says "by the birth parent" in subsection (7).

Ms. MacDonald: The foster parent would not have a right of access to the birth records of the adoptee by virtue of this legislation. So if the foster parent were the abuser, the foster parent would not be able to access the records. The foster parent was not named on the birth registration as the father—or it could have been a mother foster parent, obviously.

Mr. Jackson: Right.

Ms. MacDonald: So they have no access, by right, to the records of the adoptee under this bill.

Mr. Jackson: Right. But since 1960, that foster parent would have known who the birth parent was.

The Chair: You want to assist us, Mr. Parsons?

Mr. Parsons: I'm a little bit confused in that that example has nothing to do with this bill. A foster parent abusing is horrendous, but it's no different than if it were a teacher or a neighbour. This bill is dealing with the disclosure of information. Foster parents have no right to access the information. They may be aware of the name of the birth parent. As a foster parent, quite frankly, it's handy to know, sometimes, if you're going to bump into the birth family somewhere.

I guess my struggle is that I'm not sure—and I would suggest I'm an amateur in this field. I can think of 15 or 20 different things that should be defined as abuse. There was an example used yesterday where the birth father did the abuse and the birth mother was present and witnessed it. So is the birth mother part of the abuse, or is the birth mother a victim? In many cases I'm familiar with, the birth mother was as much a victim as the child.

It is our intention, and our hope and belief, that it should be covered under the regulations, which are not going to be done in isolation in a closed room. There will be close consultation on the regulations with individuals in the field—with groups in the adoption field, with people within the ministry who are familiar with it, with children's aid societies—and I personally would be much more comfortable were the experts to sit down and draw upon their professional knowledge to develop the definition of "abuse."

Ms. Churley: Just briefly, this does fall out of the scope of this bill and it may well be that, Mr. Jackson, you want to approach this at another time in some other kind of bill, if it can indeed be approached, because that is a more difficult one. I should say again, in the context of people being able to find each other these days, that I guess foster parents are at the top of the list in terms of probably having more information about the children they take in, for obvious reasons, but there's nothing in this bill. That's what I want to point out again. We often hear bantered around that these records are going to be made public, and they're not. The only people who have access to them are, in the scope of this bill, the birth parents and the adoptees, period. I believe there are amendments for birth siblings and grandparents and things like that, but this is not like an open record where foster parents or anybody else can have access to people's personal information.

Mr. Jackson: Forgive me. I just raised that as an incident. I want to get back to the cases that were presented to me last night which deal with children in care because they were a witness to a major homicide, or the parent didn't abuse them but is on the sex offender registry and is a drug addict. I'm not convinced that we shouldn't be trying to protect that individual. I'm not convinced that this legislation is going to help us protect those individuals. I do believe that those individuals need that kind of disclosure veto.

Mr. Jeff Leal (Peterborough): Having spent time on a board of a children's aid society, I do have a question for—I'm sorry, you are the assistant deputy minister?

Ms. MacDonald: Yes, sir.

Mr. Leal: When this legislation was being contemplated and you traditionally go out to stakeholders' groups, was OACAS, which is the umbrella group for all children's aid societies in Ontario, consulted? I want to follow up, because we seem to get bogged down now on crown wards and the role of children's aid societies. I would have thought that, obviously, you've handled this; you've gone to the OACAS and asked for their input on a major piece of legislation which really has a significant impact on their operation. I'd just like to hear your response, if I could.

Ms. MacDonald: Yes, there was consultation with the OACAS, not once but several times. The OACAS itself had views on what amendments should or should not be introduced to the bill, of course, as did all stakeholders. But we definitely did consult with them.

Mr. Leal: Is there a summation of items that they may have raised that are being addressed in the bill with regard to that consultation?

Ms. Krakower: I believe that the suggested amendments from that group were encompassed or included with COAR, the Coalition for Open Adoption Records.

Mr. Leal: OK, I just wanted to verify that.

Ms. Churley: I guess we're taking a lot of time on this one amendment, and we do need to move on. But it's an important one, and I acknowledge that. I do want to say that these things are even more complicated in that, again, because it's outside the scope of this bill, we hear stories—and I'm not talking about them here because it is outside the scope, just as foster parents are—where, unfortunately, children are adopted into abusive homes. People fall through the cracks and do a good snow job on the social workers.

I have a friend who gave up her child about the same time I did. Years later, her adult daughter came back into her life. She had run away when she was 13 years old because she had an abusive, alcoholic adoptive father. It was never reported and there was nothing anybody ever did for her. I just heard, as other people are telling stories on the other side of this issue, from others now. People are coming forward about being adopted into abusive adoptive homes with no support and no help. They're saying, "What about us? Nobody came to help us."

I'm just saying that; I'm not suggesting there's anything we can do with this bill to remedy that situation. I'm pointing out that, once again, we can't cure all the ills; we need to do our best. But there are both sides to this story.

1610

The Chair: Mr. Parsons?

Mr. Parsons: Maybe I'm out of line on this, but just to refocus, the discussion has seemed to slant toward, "We want to prevent a four- or five-year-old from getting involved with a birth parent." We're talking about adults. They may have been children at the time and in the care of the CAS, but the question is really the exchange of information among adults.

We've had examples of the bad experiences of someone being adopted into an abusive family or someone being abused in foster care—thank goodness that is extremely rare in this province—but there are birth families that have never been involved with the agency and have had some pretty unpleasant experiences in their home too. I would suggest that individuals who have been adopted are no different from any others. I don't want the focus on protecting children from abuse. We're dealing with adults and their right to know.

The Chair: Mr. Jackson?

Mr. Jackson: I would move that government motion 21l be amended by striking out "a victim of abuse by the birth parent" wherever it appears in subsections 48.4.4(7), (9), (10), (15) and (16) of the Vital Statistics Act and substituting in each case "found to be in need of protection."

The Chair: There is another amendment. We are going to concentrate only on this latest amendment for any further debate. Is there any debate on this latest amendment? None?

Mr. Jackson: Can we wait until we have copies circulated?

The Chair: We'll wait until we receive those. Do you wish to make a few comments?

Mr. Jackson: No. I've commented. I've put on the record the concerns of this group of adoptive parents and adoptees who have requested this.

The Chair: Do we all have the amendment? Any more comments on the matter?

Mr. Norman W. Sterling (Lanark–Carleton): As I understand it, this would give protection to a larger number of young people who were found to be in need of protection. The problem with the existing amendment, which I guess we passed yesterday—did we pass it yesterday after I left?

The Chair: No, nothing happened. We're still on the same one, and this is an amendment to it.

Mr. Sterling: I'd like to know what the position is with regard to including this in terms of how the ministry reacts to it.

The Chair: Is anybody prepared to answer that?

Ms. Kathleen O. Wynne (Don Valley West): I think Mr. Parsons has actually spoken to this. I won't be supporting this amendment because it's too broad. "Abuse" is to be defined in regulation. Abuse could be direct, it could be indirect, it could be complicit, but we're not dealing with the definition of "abuse" in this motion. We're dealing with the disclosure of records. This amendment is too broad, and we're going to deal with the definition of "abuse" in regulation. That's why I won't be supporting it.

The Chair: Any further debate?

Mr. Sterling: If a child is found to be in need of protection, that usually entails a court process, doesn't it? They've gone through a court process to have the child in protection, right?

Ms. Susan Yack: Yes.

Mr. Sterling: So a court has heard a case where they felt a child needs to be taken out of the hands of the birth parent in order to protect the child?

Ms. Yack: A court has found the child in need of protection, yes. There are many grounds on which a child could be found in need of protection.

1620

Mr. Sterling: But it's not a decision that's lightly taken. It's a pretty significant move on the part of the court to do this.

Ms. Wynne: Can I just respond to that? I think the point Mr. Parsons was making earlier was that that protection wouldn't have to be abuse. What we're saying is that this amendment deals with abuse, and to talk about protection is way too big a net, so we're using abuse as the test, and abuse will be defined in regulation.

Mr. Sterling: OK. Can you tell me what abuse is, then?

Ms. Wynne: I just said abuse—

Mr. Sterling: But you can't have it both ways. You say it's casting it too broad, but you're not going to tell us what the limits are.

Ms. Wynne: Mr. Parsons will speak to that.

Mr. Parsons: If I look back over time, when children have come into care in our CAS and are in need of protection, in some instances the need for protection was that the parents were homeless. Although the initiatives today are to deal with that and keep the family together, if we go back 25 or 30 years, children came into care because the parents were homeless. They came into care because the parents did not have the money to feed the children. Children came into care because of a need for dental services when parents were unable. I can even think of cases where children came into care because they did not have clothing. Those parents now do not in any sense in my imagination present a risk to the adult who wishes to contact them.

I strongly believe "in need of protection" is too generic and too broad a term. I don't construe the lack of money within a household as being abuse. There have been parents who have voluntarily said, "We can't provide the care," and then courts have said, "Actually, this child needs protection." So the term is too broad.

Mr. Jackson: If we were able to amend the word "abuse"—stand alone in an earlier section to include physical and emotional—why are we not being consistent in the legislation and putting it in here? I'm accepting what you're saying, and I know that to be a fact.

I told you about my two concerns here. We're limiting it just to the abuse by the birth parent, when in fact there are cases of protection required for an adult adoptee, in their mind, based on the circumstances they were involved in. I'm concerned that it is by the birth parent that narrows it down. The second issue is that the abuse here is open-ended for interpretation by the regulation, whereas in other sections we have said "sexual abuse," "physical and emotional abuse" and "attempted sexual abuse." Those were the four categories that we have put into previous amendments. Why are we not putting that

in here to be consistent with the legislation? The regulations can be narrower here under this definition because it only speaks to abuse, whereas we have included it in other sections.

I agree. Maybe my caucus does, but I personally don't want to capture those cases that you've identified. You're still not helping me try and help to protect—for identity purposes, someone who is a known sex offender on the sex offender registry, who is a known drug addict and so on and so forth. I know this is sensitive for some people. I think if an individual knows that and wishes not be contacted—and there are some of these kids who were 12 years old at the time and, in six short years, they have to make a decision within 12 months of their 18th birthday. All of a sudden now it's, "You better decide if you should exercise this veto."

Again I reiterate: The trigger is this custodian out there in the legislation who determines that there's info on the file that warrants a disclosure veto because there's an application from this individual. I really want to see this—can I ask legal counsel? What is the effect of dropping the words "by the birth parent"?

Ms. Krakower: I just want to address your comments about the definition, that we changed "physical, emotional or sexual." That was with respect to the definition of "harm;" that was with respect to a different situation, where somebody would be applying to the Child and Family Services Review Board in order to show they would experience harm in the future in those kinds of categories. This is a different kind of situation, where somebody would have experienced abuse as a child, just to clarify that.

Mr. Jackson: So physical abuse or emotional abuse isn't included, only sexual abuse?

Ms. Krakower: The definition of "abuse," again, would be dealt with by—

Mr. Jackson: That's not good enough. It was good enough in the other section; it should be good enough in this section. That's what's causing me concern. I have enough legal training to know that if it's clear in one section but not clear in this section, you're free to define what that means. Even in your answer, they are different circumstances dealing with a different cohort.

Ms. Krakower: I also wanted to correct one statement about the custodian. In the situation where there would be a prohibition on information, the custodian's role in this situation is not to be the determiner of whether there would be abuse. All the custodian is doing in this situation is tracking down which particular children's aid society a person was adopted from.

Mr. Jackson: You're right. Thank you for that. I meant to say, "the registrar." The registrar is the final arbiter.

Ms. Krakower: Actually the children's aid society director is the final arbiter in this case.

Mr. Jackson: No, in section 5, you say that you are giving—where was that? I raised that question yesterday. "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."

Ms. Krakower: I think that was with respect to a situation where there was an appeal by the birth parent. In that case, when the birth parent went before the Child and Family Services Review Board, if, upon looking at the file, the CFSRB determined there was no abuse, then that decision would substitute for the director of the CAS's decision.

Mr. Jackson: So the final arbiter is the registrar, because you can overturn the decision of the CAS person?

Ms. Krakower: The final determiner is actually the CFSRB. All the registrar is doing is putting that information on the file—

Mr. Jackson: In front of them.

So what is the effect, in subsection 7, of removing the words "by the birth parent"?

Ms. Krakower: It would broaden the section. That would mean there could be abuse by any other person.

Mr. Jackson: But that person and/or their spouse wouldn't necessarily be the applicant for access to the information. The example I used a couple of days ago was that of a child who was abused by a friend of the birth mother. That friend is now married to the birth mother. The birth mother makes the application—that's a legitimate concern. You have common law situations all over the place where the person says, "My need to live with this man is far greater than my need to protect my child."

Ms. Krakower: I think what it comes down to is that this bill is about the birth parents and the adoptees having access to information.

Mr. Jackson: I get that. What you're saying is that cases like that would be part of the cracks those adoptees would fall through, because it has to be abuse by a birth parent and not by a member of the immediate family. Especially with small boys, it's generally, predominantly a member of the extended family.

The Chair: Let's see if Mr. Parsons can clarify that.

Mr. Parsons: The concerns we're dealing with are relevant to safety. The case you've described where the adoptee had been abused by a friend of the birth mother, the issue is, today, at this instant, does that adult need protection from their birth mother? I say no.

1630

Mr. Jackson: And her father—and her stepfather?

Mr. Parsons: We're not talking about children. We're talking about adults.

Mr. Jackson: And her stepfather?

Mr. Parsons: Uh-huh. But the information would come from the birth mother. The legislation deals with the birth mother and the birth father. I don't believe it deals with extended or blended families. It deals with birth parents, and does that individual, as an adult, need protection from his or her birth mother? I say no. It may not be very pleasant, but I would repeat they they have the right to know.

Mr. Jackson: I made my point. I feel very strongly that this shouldn't be that limiting.

The Chair: Mr. Sterling, you're next.

Mr. Sterling: I'd like clarification from Mr. Parsons. Are you defining "birth parent" now to be actually the birth father or the birth mother?

Mr. Parsons: Yes.

Mr. Sterling: That's it?

Mr. Parsons: That's it.

Mr. Sterling: So the regulation won't include more?

Mr. Parsons: The regulation deals, I believe, with birth parents—birth mother, birth father.

Mr. Sterling: It won't include more?

Mr. Parsons: I'm looking for clarification.

Ms. MacDonald: At the moment, the bill would deal with the birth parent, either the birth mother or birth father. However, there is a government motion, number 2, which also proposes that the definition of "birth parent" could be "such other persons as may be prescribed." You may recall that last week there was some conversation about how, in the future, there might be a desire by the Legislature to contemplate a broader definition of "birth parent" to include persons involved in a more technologically assisted birth of a child.

Mr. Sterling: But it's not the Legislature that's going to make that decision. Cabinet is going to make that decision. So you're wrong in telling me that the Legislature is going to have that choice or debate that issue.

Ms. MacDonald: I'm saying, sir, that the Legislature has the choice with respect to voting on this motion. I may have misspoken.

Mr. Sterling: Our problem here is that everything is prescribed, and these are very, very important decisions. In terms of Mr. Jackson's motion, there's no guarantee that cabinet wouldn't prescribe a stepfather who had provided support etc., etc. to a child. That's the problem we have with this bill. We're going around in circles here because we can't get our hands on where the limits are.

The Chair: Any other comments? If there are none, I will now put the question. Shall the motion carry?

Mr. Jackson: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Leal, Parsons, Van Bommel, Wynne.

The Chair: The amendment does not carry.

Therefore, we'll go back to 21l. Do I have any further debate on 21l? If there is none, I will now put the question.

Interjection.

The Chair: OK, no problem. It's the one that we were left with from yesterday, I believe. It's the one from when you left, Mr. Sterling.

Mr. Sterling: 21n? Doesn't it deal with that section of 21l?

The Chair: Number 21l is what we were left with. The clerk tells me I should go to 21l and not to 21n. Would you explain why?

The Clerk of the Committee: The motion we just voted on was the amendment to the amendment. The amendment which was labelled 21m was the amendment to 21l. That amendment lost. We're now back to 21l.

The Chair: Therefore, I'm prepared to take a vote, unless there's any more debate. I will now put the question. Shall the motion carry? All those in favour? It carries.

Now we will go to 21n. Mr. Jackson, I believe it's yours.

Mr. Jackson: I move that government motion number 21, as amended, be further amended by striking out subsection 48.4(10) of the Vital Statistics Act as set out in that motion and substituting the following:

"Appeal

"(10) An order or decision of the board under this section may be appealed to the Ontario Court of Justice."

The Chair: Any comments or debate on this motion?

Interjection.

The Chair: We are at 21n, Ms. Churley. We dealt with the other one. It carried.

Mr. Sterling: This particular motion gives an appeal to a person who is dissatisfied with a decision of the board to an Ontario Court of Justice. I feel it's necessary, from the point of view that if we are going to have a hearing behind closed doors, we're dealing with a very significant right and we don't know whether there's going to be one board member or three board members there. If there's one board member there, the decision could be very arbitrary, based on the beliefs of that particular individual, as to whether a record should be disclosed or not disclosed. Therefore, I feel it's very important, in terms of due process and all of the rights that we believe in, to allow an appeal of a decision of the board to the Ontario court. These decisions, for some people, are life-threatening and life-changing. I believe that you can't just put someone in a room behind a closed door and have some faceless appointee make a decision, and assume that they're going to be full of the wisdom that is necessary to come out on the right side of the issue. So I speak very much in favour of this amendment.

Mr. Parsons: I struggle to disagree with the previous member. As I've said before, I know just enough law to be dangerous, but it is my impression that if this issue were to move to the Ontario Court of Appeal, a different set of rules would kick in: There are witnesses and the ability to cross-examine, and it becomes a public event. For an issue that is so sensitive, we know that the process for the tribunal will have to be to recognize that sensitivity. It may very well be somebody appearing before three people, but it may also mean ticking off a form and faxing it in. This process makes it too public. It will preclude certain individuals from wanting to be part of the appeal. In a court, do you not have an opportunity to cross-examine? There are people who simply don't want to tell their story publicly. It adds, I would suggest, a

great deal of potential delay, because how far will it go? If they grant leave to appeal, how far does it then go on from there?

We believe that this is a bill that merits a fairly rapid decision. I've never had the sense that if there's a decision that someone disagrees with at a lower court, going to the upper court and winning doesn't necessarily mean it was the right decision; it just means that the better lawyer presented a better case. These go on ad infinitum, and I certainly can't support it. I think we have a process that has to be fairly quick.

I am personally contacted by far too many individuals who are my age and who want to know their birth parent, and they also know the clock is running. In fact, I would suggest the length of time this is going through committee is proving very frustrating for these individuals want to have contact and do not want to lose the opportunity forever. This would be another delaying roadblock in the process, and I cannot support it.

1640

Mr. Sterling: I think that people should be clear that all court proceedings are not done in public. There are lots of court proceedings that have special circumstances to them where they're done in camera and, particularly for this kind of a matter, the court can deal with them with sensitivity.

You scare me further when you say this may be done on an application form, and some person far off says no. What does the person do? They haven't had the chance to plead their case. They haven't had a chance to have a lawyer plead their case. They've had no assurance that anybody paid any attention to their application. I think this is an affront to the person's rights under our Charter, and there is really no reason why an appeal to a court shouldn't be given. You just can't allow people to sit behind a closed door and not be answerable to anybody who makes decisions that are life-changing and not allow some kind of accountability. There's no accountability in what you're proposing to the people who are going to sit on this board. They say yes; they say no. Who's watching them?

The Chair: Is there any further debate? If there is no further debate, I will put the question.

Mr. Jackson: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Van Bommel, Wynne.

The Chair: The amendment does not carry.

Page 21: Shall that section, as amended, carry?

Mr. Jackson: I did put every amendment in order so it flows. I have it in a nice binder. I'm just going to quickly check to make sure.

The Clerk of the Committee: It's pages 21(a) through (d), Mr. Jackson.

Mr. Jackson: I've got that. I'm sorry. We've passed 21l. Did we pass 21—I have 21; then it's a, b, c and d.

The Clerk of the Committee: If I can just clarify—

Mr. Jackson: Are we going to go back to vote on that?

The Clerk of the Committee: Motion 21 has been amended. Page 21e carried. Page 21f carried.

Mr. Jackson: I don't even have e and f in front of me.

The Clerk of the Committee: Well, they were the ones back last week—

Mr. Jackson: Fair enough.

The Clerk of the Committee: —from yesterday. So 21j carried.

Mr. Jackson: Could you maybe scare me up e and f? It's already been passed. I just want to know if government motion 21, 21a, b, c and d have been passed. Yes or no?

The Clerk of the Committee: No. That's what we're doing right now.

Mr. Jackson: By approving the whole section, we've got it all covered?

The Clerk of the Committee: This is motion 21 that has been amended, and then we would do section 8.

The Chair: So basically, we are going to be voting on 21a, b, c and d, as amended.

Mr. Jackson: You're going to give me a copy of e and f, when you have a moment?

The Chair: Yes.

Mr. Jackson: Thank you.

The Chair: Let's deal with the motion that is in front of us, so it's clear to everybody what we'll be voting on.

Mr. Sterling: No, but let's vote on it.

The Chair: I'm happy that you will assist, Mr. Sterling.

I will be happy to take the vote. Shall this motion, as amended, carry? Those in favour? Those opposed? The motion, as amended, carries. So we have dealt with 21a to d.

Now that we've dealt with all those amendments, we will take a vote on the entire section. Shall section 8, as amended, carry? Those in favour? Those opposed? The section carries.

Now that we've dealt with section 8, we are going to go back to section 1. Mr. Sterling, are you ready now? This is the Liberal section that you asked be stood down. Can we deal with it now? It's page 2, which is section 1. It would be our original page 2. We dealt with it on the first day. Mr. Sterling, can we proceed, or do you still want to—

Mr. Sterling: I'm just trying to find my motion here.

Ms. Wynne: Isn't it a government motion?

The Chair: Yes it is, but Mr. Sterling asked that it be stood down.

Mr. Sterling: What page are we on?

The Chair: Page 2. Mr. Parsons, do you wish to make some comments to refresh our minds?

Mr. Parsons: It's a great amendment.

The Chair: I appreciate your comments, and I'll be happy to hear any other comments.

Mr. Parsons: I believe we already read it into the minutes and spoke to it.

The Chair: I'm prepared to take a vote, if there is no objection to that. I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Shall section 1, as amended, carry? Those in favour? Those opposed? The section, as amended, carries.

We also stood down section 2. It's a government motion. Was it read on Monday?

The Clerk of the Committee: This is a replacement.

The Chair: Read the replacement, will you please, Mr. Parsons?

Mr. Parsons: I move that subsection 6.1(1) of the Vital Statistics Act, as set out in section 2 of the bill, be amended by striking out "sections 48.1 to 48.4" and substituting "sections 48.1 to 48.4.5".

The Chair: Is there any debate on the motion?

Mr. Jackson: So it's not as we have it in front of us; it's 48.4.5, correct?

Mr. Parsons: Right. Sections 48.1 to 48.4.5.

Interjections.

Mr. Parsons: If you just vote for it, we can explain it after.

The Chair: Mr. Parsons is an engineer, so he's a straight person; clear numbers.

Mr. Jackson: You have your rules in your caucus and we have our rules, OK?

The Chair: You tell me when you're ready, gentlemen.

Mr. Jackson: My apologies. I don't know why I don't have this page in front of me.

Mr. Sterling: Mr. Chair, is it anything but renumbering? Is that all it is?

The Chair: That's all it is.

Interjection: OK, that's fine.

The Chair: OK, so we are ready, then. If there is no further debate, shall the motion carry? Those in favour? Those opposed? The motion carries.

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

Section 6 was also stood down, and we are going to go with pages 4 and 4a. Mr. Sterling and Mr. Jackson, that's your motion. It's pages 4 and 4a, subsections 48.1(3) to (3.8).

1650

Mr. Sterling: I move that section 48.1 of the bill be amended,

(a) by striking out "Subject to subsection (4)" at the beginning of subsection 48(3) and substituting "Subject to subsections (3.1) to (4)"; and

(b) by adding the following subsections after subsection 48.1(3):

"Disclosure veto

"(3.1) Subsections (3.1) to (3.8) apply only to those adoptions that came into effect prior to the date on which section 6 of the Adoption Information Disclosure Act came into force.

"Same

"(3.2) A birth parent may apply to the Registrar General to register a written veto prohibiting disclosure of a birth registration or adoption order under this section.

"Same

"(3.3) When a birth parent pays the required fee and produces evidence satisfactory to the registrar general of the birth parent's identity, the registrar general must register the disclosure veto.

"Same

"(3.4) A birth parent who registers a disclosure veto may file with it a written statement that includes any of the following information:

"1. The reasons for wishing not to disclose any identifying information.

"2. A brief summary of any available information about the medical and social history of the birth parents and their families.

"3. Other relevant non-identifying information.

"Same

"(3.5) When an applicant is informed that a disclosure veto has been registered, the registrar general must give the applicant the non-identifying information in any written statement filed with the disclosure veto.

"Same

"(3.6) A birth parent who registers a disclosure veto may cancel the veto at any time by notifying the registrar general in writing.

"Same

"(3.7) Unless it is cancelled under subsection (3.6), a disclosure veto continues in effect until two years after the death of the birth parent.

"Same

"(3.8) If a disclosure veto registered by a birth parent under subsections (3.2) and (3.3) is in effect, the registrar general shall not give the uncertified copies to the applicant."

The Chair: Any debate on the motion?

Mr. Sterling: Perhaps I'd have an opportunity to explain what the motion is. This is a motion that would allow those 3% to 5% of people whose names appear in the record to register disclosure vetoes. It's the same kind of section that is contained in the British Columbia legislation, the Alberta legislation and the Newfoundland legislation.

We've talked over the past couple of days about certain circumstances and instances where we as legislators would like to protect the confidentiality of the birth records. I think that it's been acknowledged in some of this debate that, in spite of our wisdom, there are situations that are not contained in children's aid society records and there are other circumstances that have not been observed by people and officials. Also, the system that we're setting up is very bureaucratic in nature and is going to cause a great deal of problems with regard to people coming in front of a board and discussing some of

their most personal life, perhaps with a stranger, with three strangers, with whomever. I don't understand the overall objection to leaving that decision with those people who are most likely to be affected: either the adoptee or the birth parent.

We've heard in the Legislature a number of stories where some people are truly frightened at the prospect of a disclosure being given to either a birth parent or an adoptee. We've heard about this "non-contact" provision of the legislation as being absolutely useless in terms of the effect on the family of the birth parent or an adoptee, because we know, as was said to us in this committee yesterday, that the non-contact is strictly between the birth parent and the adoptee. It's not between the adoptee and the other siblings of the birth parent; it's not between the adoptee and the spouse of the birth parent; it's not between the adoptee and the sisters and brothers of the birth parent. Therefore, the notion that a birth parent is going to receive this information and not contact those other people will not be controlled by any fine or sanction contained in this act. So the real harm that is done is the disclosure when a person doesn't want it. That's the harm. The harm is the disclosure, violating the privacy rights of the mother, the birth parent and/or the adoptee. So the only way that this can be protected is by not giving this disclosure.

This legislation goes a long, long way to change our existing laws. At the present time, in order to go through our system and be able to get a reunion, there has to be a positive act on behalf of both the adoptee and the birth parent. They both have to register with the Ontario government, saying, "I want this to happen." This legislation switches the burden around and says, "If you don't want to be contacted, you've got to register." As I said before, 3% to 5% of people may do that. That's the experience in the other provinces that have the same kind of legislation.

The other part that I think people aren't perhaps paying enough attention to is what rights are being changed here retrospectively? We're changing 30 or 40 years of trust between people who have their names on a record sealed somewhere, and the government which promised them over that period of time that those records would remain sealed unless both parties actively contacted the government to unseal those records.

We've heard Clayton Ruby. We know of the Alberta legislation, which has been ruled constitutional, where they have a disclosure veto. I think the government is playing down the risk of the constitutionality of this far too much. We've heard Mr. Ruby saying that, in his mind, there's no question that there's a constitutional problem.

I've practised law, and I know that there are different opinions, particularly on constitutional law. But I don't think that Mr. Ruby is alone in his opinion with regard to this law and the constitutionality of this particular provision. It seems to me that the government is risking the whole bundle, the whole disclosure paradigm, without having this section in it. So you're taking a risk on allowing 95% to 97% of people in Ontario to obtain their record for the sake of the final 3% to 5%. I would argue that in some cases, for those 3% to 5%, if those individual cases came in front of each and every one of us, we'd go to bat for them.

1700

I really don't understand. I know every editorial of every newspaper that I have seen in Ontario supports the inclusion of a disclosure veto. They have, in their minds, weighed the rights of the people seeking the information and the rights of the people who would want to retain their privacy in this respect. Quite frankly, I haven't met too many people on the street who think that this is a great sacrifice to include in the legislation and still have the intent of the legislation carried forward.

Our party has made it quite clear that if this disclosure veto is included, the bill will be supported on third reading. If it's not, then there's probably going to be little if no support in the caucus for it.

There are a whole number of reasons why I think the government should consider this section very carefully. One of the reasons I didn't want to put it forward was that I was hoping there would be some second thoughts on the part of the government with regard to this matter. I really think that logic demands that the amendment be passed and included in the bill.

Mr. Parsons: I think this is probably the most emotional bill I've been involved with. I haven't been here that long, but I think it's because I see the faces and I see the people involved with it. It's an issue I've been around for quite some time through various things I've been involved in. I don't think today the way I thought three years ago. And this is no disrespect to you; I understand where you're coming from. In fact, I appreciate the sincerity that's gone into the debate from all sides on this.

But here's where I'm coming from. I know that there are birth mothers who were promised that their name would never be divulged. Maybe the person making the promise didn't have the authority to do it, but they did. I know at the same time that there are birth mothers who were promised that in the future there would be assistance given to help them find their child. Maybe they didn't have the authority to do that either, but they did. I don't know what the ratio is, but I've talked to quite a significant number of birth mothers who very clearly believed that they were going to be helped to find their child once they were in a position to become reinvolved with it.

If we were to pass a piece of legislation that says it is illegal in Ontario to discriminate against someone on the basis of age, except if they were born before 2005, we would be appalled. If we said that we are not going to discriminate against you on the basis of age, except for 3% to 5% of you, that would be wrong. I've started to focus on the adoptee, and the request, as I see it, from the adoptee is not to be given rights but to be given back the rights that everyone else has enjoyed, to be restored to the same level position as every other person in our society, to have access to it.

I wish I had a magic answer that would keep both parties happy. There isn't. Every time somebody gets a

right, somebody else kind of loses a right, because it infringes on it in some large or small way. I believe that adoptees unfortunately had their rights to information taken away, and I think it's time it was restored. For that reason, I'm not prepared to restore it for the people who were involved in it after today; I'm not prepared to restore it just for those once their birth parent or their child dies. If you restore it, you restore it today. This amendment continues to deprive too many individuals of their rights, and I can't support the amendment.

Ms. Churley: Just briefly, because we've all said these things the other day when we began, but for the record I don't at all support this amendment. I must say that people on the street who might agree, after hearing some of the stories that have been told about what could happen in the future, would upon hearing that perspective say that, yes, they'd support a disclosure amendment. But I must tell you, if you ask the 3% to 5% of the people who would still be discriminated against, I expect that they would not share that same position.

Retroactive legislation is not unknown when human rights are involved, and when something is right, all must benefit, not just those born after a certain date or only under certain circumstances. The Ontario Association of Children's Aid Societies fully supports leaving a disclosure veto out of this. I've made the case before that England, for over 20 years, and other jurisdictions, have had open adoption records, disclosure for adoptees and birth parents, and these things have not happened. You can't discriminate against those few.

There are some people here today who came before us in committee. There's a gentlemen here who came forward and talked about reuniting with his birth mother, who had been a rape victim. It was a moving story, but he also made it very clear that for him there's nothing to be ashamed about. He also made it very clear that he made contact with his birth mother and there was nothing at the time preventing him from doing so. There is not even a contact veto now. I would say that under these circumstances, if this veto is put in place, it's quite possible that he'd be one of those 3% to 5% we are voting to discriminate against here today. The wonderful healing process that he was lucky to have with his birth mother—he would not have been given that opportunity. He said that at the beginning she was reluctant, and perhaps she would have been one of those. It worked out well for them. That's not to say it would for everybody, and that's why a contact veto is there, to not allow that to happen should one of the parties so desire. But discrimination is discrimination, and I think that lives have been shattered on the other side of this too.

To finish up, let me tell a little bit about that other side. I hear from people who are, in some cases, suicidal or unhappy on the other side because they can't get the information. Women are losing babies in miscarriages and don't know why and are trying to find out. Preventable diseases are being passed on to children. People are living their lives in fear. They talk about that because they don't know. Time after time, you hear people are living in fear because of not knowing. Elderly women in particular, in their 70s and 80s, who gave up children at birth want to know before they die. They just want to know how their children are doing.

Those are just some examples on the other side of this that we're not talking about so much. In the interests of getting this bill passed for those people I'm talking about here and others, I'll end it here. But I can't tell you how much I disagree with this. The other jurisdictions, despite the court cases in Canada, will have to backtrack on this eventually, as other countries decided to not even try to bring it in because it's discrimination.

1710

Mr. Jackson: I am concerned that this legislation will get a constitutional challenge. I happen to be someone who has fought for the last 10 years to get retroactive legislation for DNA testing for criminals so I can protect victims across Canada. It's something I've felt strongly about. But the difference between these countries that Ms. Churley is talking about—and I think it's wonderful that they've got that legislation. The problem is, they don't have a Charter of Rights and Freedoms. This is a unique document, and the last time I checked, I'm still covered under it. Mr. Ruby came and made a brief but compelling statement about that fact.

The truth of the matter is that DNA testing for criminals is not allowed retroactively. As long as they're incarcerated, they can be tested. The government knew that when—it would lose its own constitutional challenge. It doesn't prevent us from raising it. It's on the record, but I'll tell you, as a Canadian I'm upset that Ms. Churley would like to have this retroactively. Ultimately, the courts may probably not agree with her or Minister Pupatello, because it sided on the side that you can't go in retroactively to a known offender who has been released from jail and ask them for a DNA sample, because it's retroactive in nature.

I just want to put that on the record. It's been bothering me, and that's an area of law where we already have a document that indicates there may be some concerns. I don't want to stylize it beyond that, because if you hire four lawyers, you get six opinions. God knows, there will be enough opinions about this legislation when we have a final draft.

I've said my piece, Mr. Chairman. These amendments were brought in and, frankly, as someone who supports a more open approach to adoption records, I'd hate to see this legislation go down when we could have resolved it for that 4% or 5% that three other provinces have deemed would be protected.

Thank you for giving me the opportunity to make that comment.

The Chair: Thank you, Mr. Jackson. Ms. Wynne is next.

Ms. Wynne: I don't want to prolong this discussion. I just want to be clear that, and I think we've said it before from this side, we understand that there are competing rights and interests. That's what makes this a difficult piece of legislation. I think we've all had to struggle with

it. I don't think it's been easy for anybody. We have attempted to put protections in place in terms of the contact veto and the option of a disclosure veto where harm may be a possibility, but I think at the end of the day what we've done as a government is come down on the side of the right to information, because as soon as there's an automatic possibility of a disclosure veto, the right to information is going to be lost by someone, and that's the right that we're saying trumps the others in this situation. I want to be on the record as saying that I understand the complexity of the situation and I accept the position that the right to information is the framework for this legislation.

Mr. Jackson: The truth is, we're going to have a group of lawyers now who are going to argue that because we passed 21l, now we have—to use Ms. Wynne's own comments, who trumps whom? Once you've wandered into this area of a disclosure veto as a right for one group—I mean, we're not going to change this section, but the truth of the matter is, you've now introduced that into a potential court case. I can see why the government held firm in the first round with the legislation. Anyway, we'll let the lawyers discuss that later.

The Chair: Ms. Churley and then Mr. Sterling—of course on the motion.

Ms. Churley: On the motion, yes. Ms. Donna Marchand, who's not here today, just recently won a court case on this very issue. I can assure you that one way or the other, especially if there is a disclosure veto and some of the messy and sloppy recordings done in the past when it comes to adoption—there's just one court case won by an adoptee, who has now been provided with her information, and I'm afraid we've already gone down that path. So if that's your fear, I expect that this—I won't go into the details of it now. I don't have it with me, but if we come back here again—I hope we pass this today—I can provide more details to the committee, but I can assure you that we've walked down that path anyway, one way or the other.

Mr. Sterling: It is difficult to weigh rights and that kind of thing with regard to privacy in particular. This province is going to have the distinction of having the government which least cares about privacy in all of Canada with regard to this matter. The other provinces have found a different kind of balance between the right to privacy and the right for other people to get information. As Mr. Jackson says, you would like to change the rules retroactively with regard to what you are entitled to and what you are not entitled to. When you travel down those roads, you're travelling in dangerous territory.

I don't see it as a case of discrimination. I see it as a conflict between two sets of views as to what they were entitled to and promised and what the government practised. The registrar practised a sealed-record regime. The public came to rely on that, and now we're changing that retroactively. I just think that the disclosure veto, as found by the other provinces and some other jurisdictions as well, is a good balance between the two parts. If we haven't struck a decent balance, the courts will throw it back at us.

The Chair: Any further debate? If there is none, I'll put the question. Shall the motion carry?

Mr. Sterling: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Van Bommel, Wynne.

The Chair: The amendment does not carry.

The next one is page 5.

Mr. Parsons: I believe it is—

The Chair: Mr. Parsons, just one second, please.

We go to number 6. So back to you, Mr. Jackson.

Mr. Jackson: I move that section 48.1 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection after subsection 48.2(3):

"Disclosure veto

"(3.1) Despite subsection (3), the registrar general shall not give the applicant the uncertified copies if a birth parent has registered a disclosure veto."

The Chair: Do you want to make any comments?

Mr. Jackson: It's self-explanatory, Mr. Chairman.

The Chair: Any debate on the amendment? If there is none, I'll be happy to take a vote on the matter. Shall the motion carry?

Mr. Jackson: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Van Bommel, Wynne.

The Chair: The amendment does not carry.

We go to page 7. Mr. Parsons, please.

Mr. Parsons: I move that section 48.1 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection after subsection 48.1(3):

"Notice of preferred manner of contact

"(3.1) If a notice registered by a birth parent under subsection 48.2.2(2) is in effect, the registrar general shall give the applicant a copy of the notice when the registrar general gives the applicant the uncertified copies."

Mr. Jackson: What are we talking about here with the uncertified copies? What are we talking about?

The Chair: Maybe the ministry staff can explain, please.

Ms. Yack: It refers to the uncertified copies that are mentioned in 48.1. That would be the uncertified copy, for example, of the original birth registration.

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Mr. Jackson: Why are we giving them uncertified ones?

Ms. Krakower: Why are we giving them uncertified copies?

Mr. Jackson: Yes.

Ms. MacDonald: I would need to ask my colleague from the Office of the Registrar General to come forward, please.

The Chair: Would you please come to the microphone so that we can all hear, and introduce yourself when you start.

Ms. Nancy Sills: My name is Nancy Sills, and I'm senior counsel with consumer and business services. You were asking why the Office of the Registrar General is going to give uncertified copies.

Mr. Jackson: Yes.

Ms. Sills: When the Office of the Registrar General gives a certified copy of a registration, it's admissible in court as evidence. I think the purpose here is to provide the information to the adoptee, but it is not going to be provided as proof to be used for other purposes.

Mr. Jackson: OK. But "for other purposes" could include any number of things required by the government. "Original birth certificate" is a phrase used quite frequently, from passports to applications. I wouldn't have even raised this, except that you're specific about them being uncertified copies, and our constituency offices are filled with applications for certified copies of various documents.

Ms. Churley: Can I answer what I think it is?

The Chair: Yes, and then I'll go back to staff.

Ms. Churley: It's to prevent identity theft. This was something that was raised during one of my bills. It's so this cannot be used for any legal reason. It's something that I was asked to consider, in fact, when I was doing my bill. As I understand it, that is really all it's about. It's very simple, making sure that this cannot be used for any legal reasons; it's for identity reasons only.

Ms. Sills: I would agree with that as well. It's for security reasons.

Mr. Jackson: So we're talking about a birth parent making an application to get the disclosure information from the registrar general, correct? They are seeking a copy of—what?—their child's original birth certificate?

Ms. Sills: They're seeking a copy of the original birth registration.

Mr. Jackson: OK. And then the child has a second birth registration, right? The one for the adoptive parent.

Ms. Sills: Yes, that's the substituted birth registration.

Mr. Jackson: So there are two copies we guarantee an applicant will get. The only reason I raise that is that I was revisiting the New South Wales legislation last night, and they put it right in the law that "an adopted person is entitled to receive: (a) the person's original birth certificate, and (b) the person's adopted person's birth record," and then it goes on for some other items that are documented here. I didn't see in the legislation where we're ensuring that they get access to both.

Ms. Sills: In 48.2, it specifically states that the birth parent may apply and they can get the original registration, the substituted registration and any registered adoption order.

Mr. Jackson: So that covers everything?

Ms. Sills: Yes.

Mr. Jackson: OK. Where does the adoptee have the right to have access to their original document? What section is that in?

Ms. Sills: In 48.1(1), "An adopted person may apply to the registrar general for an uncertified copy of the original registration, if any, of the adopted person's birth and an uncertified copy of any registered adoption order.

Mr. Jackson: What page is that? Or is that in the original bill?

Ms. Sills: It's in the bill, section 6.

Mr. Jackson: It's 48(1)?

Ms. Sills: It's 48.1(1).

The Chair: Mr. Jackson?

Mr. Jackson: Just give me two seconds.

Mr. Parsons: Could I clarify? This amendment is not about whether the certificate is certified or uncertified; this amendment is about, at the same time, giving the individual the preferred method of contact. That's what the amendment deals with. Although I would suggest that for the individual, they're not after whether it's certified or uncertified. They're not after the birth registration; they're after the information on the birth registration. That's the whole point of what they're looking for.

Mr. Jackson: Fair enough. That's helpful. Are we giving a certified copy of their original document to the adoptee?

Ms. Sills: No, we are not.

Mr. Jackson: Why not? That is their identifying information.

Ms. Sills: Yes, but it's been superseded by the substituted birth registration, so it's not the current record that the office of the registrar general would issue a birth certificate from. Am I confusing you?

Mr. Jackson: No, you're not confusing me. The date of birth is not a problem—

Interjections.

The Chair: Let's have one meeting, please. When we have one meeting, everybody will able to appreciate the questions.

Mr. Jackson, you still have the floor.

Mr. Jackson: I'm thinking now of people who were adopted 50 or 75 years ago. There are some problems with the nature of records kept at the time. In the last 25 years, these problems don't occur where you've got different dates for your birth, you've got different cities of your birth and all manner of things that are occurring.

Maybe it's my sensitivity to seniors who are looking at entitlement issues, when government systems say,

"This is your date of birth"—because you've got two sets of records. It's not a modern problem; it's a problem of persons who are aged. That's why I'm just wondering why we can't give them certified copies: (a) it saves them some money and (b) they're now of the stature where they might need them in order to apply for various other things that are required from time to time, especially if there is a difference in age or time of birth.

Ms. Sills: You would always be able to get a certified copy of the substituted birth registration and be able to get a birth certificate. So it's just the original birth registration that would only be an uncertified copy. If you're concerned about proof of identity, they would be able to get it; it just wouldn't be the original birth registration.

Mr. Jackson: My concern is not the disclosure issue; my concern here is where the information is at odds between the two documents. Which one does the government consider valid for purposes of determining the date of birth?

Ms. Sills: That would be the substituted birth registration.

Mr. Jackson: I've had cases where people have two different birth dates. It's an entitlement issue. I'll drop it. I now understand it. That was the thing that was concerning me: which one is the operative one? But you've answered the question, so thank you.

The Chair: You've answered the question. Mr. Jackson has finished. Ms. Churley?

Ms. Churley: All right. We can move on. Speaking as a former registrar general, I feel it's important to put something on the record, though. We should be very proud of how well kept the registrar general information is. For obvious reasons, it's very well kept. The information, both on the original birth certificate and the substituted birth certificate—which you now understand is what we're talking about here, after the adoption goes through. They're very, very good records. Where we have problems with records—and it's not to knock CAS—it's in some of the so-called non-identifying information and those particular records where things sometimes get really mixed up. I think, though, we're all clear on what we're talking about here now.

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The Chair: Any further debate on the motion? If there's none, I will put the question. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

Now there's 7a. Ms. Churley, I believe it's your motion.

Ms. Churley: This is just a housecleaning one that we somehow all collectively forgot to get in here.

I move that section 48.1 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection after subsection 48.1(5):

"Same

"(5) If the notice is withdrawn after the registrar general has given a copy of it to the applicant, the registrar general shall endeavour to notify the applicant that it has been withdrawn."

This is, of course, self-evident and ensures that adoptees will be notified that a contact veto has been withdrawn.

The Chair: Is there any debate on this motion? If there is none, I will put the question. Shall the motion carry? Those in favour?

Mr. Sterling: What is the impact of the motion?

Ms. Churley: With the bill right now, I presumed it was accidental. People can register contact vetoes, but there's no mechanism, should somebody withdraw—which people have the right to do—a contact veto if they change their mind, to notify that adoptees can be contacted if a veto has been withdrawn. That's all it does. So if I, as a birth mother, put in a veto and then changed my mind and wanted that veto removed, right now the bill doesn't allow for the other party to be informed.

The Chair: Is there any further debate on this? I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

We will move to page 8. Mr. Parsons?

Mr. Parsons: I move that section 48.1 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsections:

"Effect of application for order prohibiting disclosure

"(6) If the registrar general receives notice of an application under section 48.4.2 for an order directing him or her not to give the uncertified copies to the applicant, the registrar general shall not give the uncertified copies to the applicant before the registrar general receives,

"(a) a certified copy of the order; or

"(b) notice that the application for the order has been dismissed, withdrawn or abandoned.

"Effect of order

"(7) If the registrar general receives a certified copy of an order of the board directing the registrar general not to give the uncertified copies to the applicant, the registrar general shall not give them to the applicant.

"Rescission of order

"(8) Subsection (7) does not apply if the registrar general receives notice that the board has rescinded the order.

"Notice of prohibition against disclosure to a birth parent

"(9) If the registrar general has received notice under section 48.4.4 that, by virtue of that section, he or she is prohibited from giving the information described in subsection 48.2(1) to the applicant's birth parent and if that notice has not been rescinded, the registrar general shall give the applicant a copy of the notice when the registrar general gives the applicant the uncertified copies.

"Deemed receipt by registrar general

"(10) For the purposes of this section, the registrar general shall be deemed not to have received a notice or certified copy referred to in this section until the registrar general has matched the notice or copy with the original registration, if any, of the adopted person's birth or, if

there is no original registration, until the registrar general has matched it with the registered adoption order.

"Disclosure before deemed receipt

"(11) Subsections (6) to (9) do not apply if, before the registrar general is deemed to have received the notice or copy, as the case may be, the registrar general has already given the uncertified copies to the applicant."

The Chair: Any comments on the motion from anyone?

Mr. Sterling: Can he explain the motion to us?

The Chair: If he wants to make any comments, he will. It's up to you, Mr. Parsons.

Mr. Parsons: Sure. This is part of the amendments that we have introduced that creates an automatic prohibition against disclosure of the birth parent until it can be determined that the birth parent did not abuse the adoptee. This has been the focus for the last little while. It only applies to crown ward adoptees, not adoptees who have been through private adoption. It means that when the birth parent asks the registrar general for identifying information, before giving that information, the registrar general has to check with the custodian, who determines whether there is a caution or restriction on that information.

The Chair: Is there any debate on the motion?

Mr. Sterling: Is there a way to determine immediately whether or not they have to check this through? There are 250,000 files; every birth parent's request is checked. This could take a lot of work.

Mr. Parsons: But not every birth parent's request is checked. Adoptees who have been crown wards will have been checked.

Mr. Sterling: How do they determine that?

Ms. Churley: That's the majority.

Mr. Sterling: The majority are crown wards?

Mr. Parsons: Probably, yes.

Ms. Churley: Can I ask a question on that as well? Most children, as we've ascertained, who are adopted become crown wards, from all of us who gave up our children in that way. So does that mean this would apply to every single adoption that came under children's aid?

Ms. MacDonald: Let me start by trying to explain the process, and that may help. If a birth parent applies for the records of their former child who became a crown ward, the Office of the Registrar General would not be able to determine whether that child had indeed been a crown ward or had never been a crown ward. So the business process would be that when the ORG receives an application by a birth parent for a file which the ORG does know to have been that of an adoptee, at that moment the file will be sent through the custodian and on to a CAS to verify whether there has ever been abuse and then back through the process.

First of all, we don't expect that every birth parent will apply in the first year. My staff are just verifying the volume of applications in the first year that occurred in other jurisdictions, and that may be of some assistance to the committee in looking at the volume overall.

Forgive me, Ms. Churley, I didn't catch the gist of your question.

Ms. Churley: I think you just answered it in terms of how it would work.

The Chair: Any further debate?

Mr. Sterling: You don't have any numbers or estimates of numbers or length of time that this is going to take?

Ms. MacDonald: We have not spelled out the business processes for the custodian at this point, Mr. Sterling. We would be doing that in regulation and obviously in extensive consultation with our stakeholders. The intent would be to work as quickly as possible but with all due care not to release the wrong record, obviously, to the wrong parent, who might well have been an abuser. So it would be as quickly as possible but with all due diligence.

The Chair: Further debate? I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

We'll deal with page 5. Mr. Parsons, you can introduce it now, please.

Mr. Parsons: I move that subsection 48.1(3) of the Vital Statistics Act, as set out in section 6 of the bill, be amended by striking out "subsection (4)" and substituting "subsections (4), (6) and (7)."

The Chair: Any comments? Any debate?

Mr. Parsons: This reflects those recent amendments so that instructions—

Mr. Sterling: OK. It's just numbering them.

Mr. Parsons: It's renumbering, yes.

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The Chair: I will now put the question. Shall the motion carry? All those in favour? Those opposed? The motion carries.

We go back to you, Mr. Parsons, for 8b.

Interjection.

The Chair: You have a correction? OK. Do you or Mr. Parsons wish to tell us?

Ms. Hopkins: On motion 8b there's a correction as a result of the passing of an earlier motion. Motion 8b proposes adding subsection (11). The section that would be added would be numbered subsection (12).

The Chair: Is that clear to all? Mr. Parsons.

Mr. Parsons: I move that government motion 8 be amended by adding the following subsection to section 48.1 of the Vital Statistics Act, at the end of that section:

"Mandatory delay in disclosure

"(12) If the registrar general receives notice that the Child and Family Services Review Board has given him or her a direction described in subsection 48.4.2(6), the registrar general shall comply with the direction."

The Chair: Any comments?

Mr. Parsons: This provides for a delay where the review board is not prohibiting disclosure. It is to give the birth parent time to prepare for the disclosure of the identifying information.

The Chair: Any debate on the motion?

Mr. Jackson: Are we talking about the section that I put in about the delay?

Mr. Parsons: Yes. This relates back to yesterday, where you made an amendment that related to one party. There are now matching amendments that relate to all parties.

The Chair: Any further debate on the motion? If there's none, I will now put the question.

Shall the motion carry? All those in favour? Those opposed? Carried.

Page 9.

Mr. Jackson: I move that section 48.2 of the bill be amended,

(a) by striking out "Subject to subsections (4), (6) and (7)" at the beginning of subsection 48.2(3) and substituting "Subject to subsections (3.1) to (4), (6) and (7)"; and

(b) by adding the following subsections after subsection 48.2(3):

"Disclosure veto

"(3.1) Subsections (3.2) to (3.8) apply only to those adoptions that came into effect prior to the date on which section 6 of the Adoption Information Disclosure Act, 2005 came into force.

"Same

"(3.2) An adopted person may apply to the registrar general to register a written veto prohibiting disclosure of the information described in subsection (1).

"Same

"(3.3) When an adopted person pays the required fee and produces evidence satisfactory to the registrar general of the adopted person's identity, the registrar general must register the disclosure veto.

"Same

"(3.4) An adopted person who registers a disclosure veto may file with it a written statement that includes any of the following information:

"1. The reasons for wishing not to disclose any identifying information.

"2. Other relevant information.

"Same

"(3.5) When an applicant is informed that a disclosure veto has been registered, the registrar general must give the applicant the non-identifying information in any written statement filed with the disclosure veto.

"Same

"(3.6) An adopted person who registers a disclosure veto may cancel the veto at any time by notifying the registrar general in writing.

"Same

"(3.7) Unless it is cancelled under subsection (3.6), a disclosure veto continues in effect until two years after the death of the adopted person.

"Same

"(3.8) If a disclosure veto registered by an adopted person under subsections (3.2) and (3.3) is in effect, the registrar general shall not give the information described in subsection (1) to the applicant."

The Chair: Any debate or comments, Mr. Jackson? Any debate from the membership?

If there is none, I will now put the question. Shall the motion carry?

Mr. Sterling: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Wynne.

The Chair: The amendment does not carry.

Ms. Churley, page 10, please.

Ms. Churley: I move that subsection 48.2(3) of the Vital Statistics Act, as set out in section 6 of the bill, be amended by striking out "and the adopted person's age."

I took the advice of COAR, the Coalition for Open Adoption Records, and others on this. What I'm amending here is that the bill requires that birth parents produce evidence of the adopted person's age. To many, that seems logical, but for a number of reasons, and I'll give you a few, historically birth parents are given no legal documents to prove that they gave birth or surrendered a child for adoption. They don't have a copy of the original birth registration form. They don't receive a copy of the adoption order or the consent to adopt, the document they've signed. So they have nothing that demonstrates that the birth or adoption took place. In terms of the birth father, sometimes they're not told of the date of the actual birth.

Furthermore, there are many birth mothers who are in a state of extreme distress and trauma after giving birth to a baby and then relinquishing it for adoption. I'm one of those who remembered my son's birthday every single day and lit a candle on his birthday. I've talked to other young women who have given up their children, later in life, who say that it was just too stressful and painful, and they tried to wipe the memory out—unsuccessfully of course, but they actually had wiped out the memory of the date of the birth of their children.

For those reasons, I put forward this amendment, because under those circumstances, there are some birth parents who would not know the actual birth date.

The Chair: Is there any further debate?

Mr. Parsons: I agree with that. In fact, if we go back in time 50 or 60 years ago, some births were not registered, some were very, very delayed, and there was great difficulty in producing evidence of them. However, the act currently doesn't require a birth certificate; it requires evidence satisfactory to the registrar. So there's a balance between saying, "unable to verify the date absolutely," and a concern that that birth parent not be given information on the wrong child.

We believe it is important that the registrar general have the ability to require the best evidence available to ensure that in fact the information being requested by the birth parent does relate to the child that we believe is the match. So we will not support the amendment, because

we believe the registrar general needs to have some evidence relating to the birth date to ensure that the right information is shared.

The Chair: Is there any further debate? If there is none, I'll put the question.

Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

Mr. Parsons, page 10a.

Mr. Parsons: I move that subsections 48.2 (3) to (8) of the Vital Statistics Act, as set out in section 6 of the bill, be struck out and the following substituted:

"Disclosure of information

"(3) Subject to the restrictions set out in this section, the applicant may obtain the information described in subsection (1) from the registrar general upon application and upon payment of the required fee, but only if the applicant produces evidence satisfactory to the registrar general of the applicant's identity and the adopted person's age.

"Notice of preferred manner of contact

"(4) If a notice registered by the adopted person under subsection 48.2.2(1) is in effect, the registrar general shall give the applicant a copy of the notice when the registrar general gives the applicant the information described in subsection (1).

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"Notice of wish not to be contacted

"(5) If a notice registered by the adopted person under subsection 48.3(1) is in effect, the registrar general shall give the applicant a copy of the notice when the registrar general gives the applicant the information described in subsection (1).

"Temporary restriction on disclosure

"(6) The registrar general shall not give the information described in subsection (1) to the applicant while any of the following circumstances exist:

"1. The registrar general is required by section 48.4.4 to ask a designated custodian for notice about whether the registrar general is prohibited, by virtue of that section, from giving the information to the applicant. However, the registrar general has not yet received the notice.

"2. The registrar general has received notice of an application under section 48.4 or 48.4.1 for an order directing him or her not to give the information to the applicant. However, the registrar general has not yet received either a certified copy of an order or a notice that the application has been dismissed, withdrawn or abandoned.

"3. A notice registered by the adopted person under subsection 48.3(1) is in effect. However, the applicant has not yet agreed in writing that he or she will not contact or attempt to contact the adopted person, either directly or indirectly.

"Prohibition against disclosure

"(7) The registrar general shall not give the information described in subsection (1) to the applicant if either of the following circumstances exist:

"1. The registrar general has received notice under section 48.4.4 that, by virtue of that section, the registrar general is prohibited from giving the information to the applicant. That notice has not been rescinded. In addition, there is not a notice of waiver under subsection 48.4.5 that is in effect.

"2. The registrar general has received a certified copy of an order under section 48.4 or 48.4.1 directing him or her not to give the information to the applicant. The registrar general has not received notice that the order has been rescinded.

"Deemed receipt by registrar general

"(8) For the purposes of this section, the registrar general shall be deemed not to have received a notice or certified copy referred to in this section until the registrar general has matched the notice or copy with the original registration, if any, of the adopted person's birth or, if there is no original registration, until the registrar general has matched it with the registered adoption order.

"Disclosure before deemed receipt

"(9) Subsections (4) and (5), paragraph 2 of subsection (6) and paragraph 2 of subsection (7) do not apply if, before the registrar general is deemed to have received the notice or copy, as the case may be, the registrar general has already given the information described in subsection (1) to the applicant."

The Chair: Any debate on the motion?

Mr. Sterling: Maybe we could have an explanation.

Mr. Parsons: I hate it when you do that.

What this section does is it defines or outlines the kind of information that can be shared with an applicant by the registrar general: the identifying information, the payment, the proof required, the contact preference and how to deal with the no-contact notices.

The Chair: Any further debate on the motion?

Mr. Sterling: Can I just ask one question about the non-contact notice? What's contained in the non-contact notice? Just the ban?

Mr. Parsons: The non-contact notice provides them with the information but indicates that they are prohibited from contacting or arranging for someone else to contact the persons named in that information.

Ms. Krakower: I would just like to add that in addition to the actual contact preference, there would also be a medical form or information that would be filled out by the individual who put the no-contact notice in place, as well as a reason for the no-contact notice.

Mr. Sterling: Is that the information in subsection (1)?

Ms. Yack: If you look at 48.3(4), it says, "The notice may include a brief statement concerning the person's reasons for not wishing to be contacted and a brief statement of any available information about the person's medical and family history."

The Chair: Is there any further debate?

I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Mr. Jackson, page 11.

Mr. Jackson: Give me two seconds.

The Chair: It deals with subsections 48.2(3.1) through 48.2(3.3).

Mr. Jackson: I move that section 48.2 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsections after subsection 48.2(3):

"Exception: former crown wards

"(3.1) Despite subsection (3), the registrar general shall not give the applicant the information described in subsection (1) about an adopted person who was a ward of the crown before being adopted, unless the adopted person has registered a notice authorizing the release of the information to a birth parent.

"Same

"(3.2) Upon application, an adopted person who is at least 18 years old and who was a ward of the crown before being adopted may register a notice authorizing the registrar general to give the information described in subsection (1) to a birth parent.

"Same

"(3.3) An adopted person who was a ward of the crown before being adopted and who is at least 18 years old is entitled to the information in his or her CAS adoption file, and the society shall give it to the adopted person upon request."

Mr. Chairman, I'm going to ask that we separate (3.2) and (3.3). The only reason I'm suggesting that is because I want to make sure that that crown person—actually, I could rework this to literally say that those persons who are eligible under this act to have a disclosure veto be entitled to have access to their files. I've checked this out. It's a right they have; it's just not entrenched anywhere in legislation. So subsections 48.2(3.1) and (3.2) deal with a blanket exemption, a disclosure veto for all crown wards. Subsection 48.2(3.3) was added later because I wanted them to have access to their records. I'd like to vote on them separately.

The Chair: Divide the motion in two.

The Clerk of the Committee: OK. So the motion will be (3.1) and (3.2), and then you want a separate motion for (3.3)?

Mr. Jackson: Yes. We'll have a separate motion unless counsel suggests that this might be better worded to include the CFSA, which should include some statement about access to their records if I want all crown wards to have access to their records. But I'm speaking to the motion, whether it's divided or not.

The Chair: OK.

Mr. Jackson: I keep harping on this issue of at what point does the adult adoptee get informed that there are issues in their CAS file involving abuse, as defined by regulation? I fundamentally believe that once you've told someone that, they should have a right to examine what is in that file. There's no law that says they can't, but I can't help but think that if there's nothing in this legislation that assists or facilitates or entitles an individual, now that the state has determined that they are vulnerable to the extent that it will cause them immense harm to have contact, they should at least know the detail. For anyone who has worked with incest survivors, this is a very essential piece of a puzzle that they are entitled to. It has nothing to do with contact. It has to do with the pieces of the puzzle that they are trying to reconstruct within their own life, in their own mind, about what they have suffered, and no one is in a position to assist them with that.

1800

I also want to remind members of the committee that I still have a motion we have yet to deal with, which talks about access to counselling for these individuals who, upon learning this information, some for the first time, will be able to have, not mandatory counselling, but optional counselling made available to them, and it shouldn't necessarily be at their expense. If the state determines that information about their life must now be revealed and uncovered, the state has an obligation to determine that the person, in the process of becoming whole, has those instruments and tools that can help facilitate their becoming whole. That generally involves professional support, counselling and matters of that nature.

I'm asking legal counsel, or we could ask the ministry staff—it doesn't really fit in the bill to say that all crown wards should have access to their files, but I think there is a compelling case that sort of indicates that we're saying, "You are a special class of adoptees, and you should therefore have access to your records." Can I get some—

The Chair: We can have a quick answer now—it is after six; we could end the evening.

Mr. Jackson: The answer could be given to me. We have a few days to craft an amendment. The ground has shifted rather considerably since I first drafted this.

The Chair: I am very happy to hear that. Do you want a quick answer now?

Ms. Churley: Can I ask for a clarification?

The Chair: Unless there is an objection, yes.

Ms. Churley: I'm not quite sure what you are talking about, but it's my understanding—and this is what we need clarification on—that there is no right to the CAS files except for the non-identifying information we've been talking about, right? Correct? What you're asking is that certain adoptees have the right to files they normally can't see now—

Mr. Jackson: Correct.

Ms. Churley: —outside of their non-identifying information that anybody can apply for.

Mr. Jackson: It's the principle I fought for in the Victims' Bill of Rights: If you don't know you're a victim, and then someone in the state and calls you up and says, "Do you know what? You're a victim. Therefore, no one is going to be able to see your file." They'll say, "Wait a minute. I'm suffering all this trauma, all this mess in my life. Will somebody please tell me what happened?" They should have a right to access that information. That's why I would like to amend what I've tabled, so I can deal just with this specific cohort of individuals.

The Chair: Staff will provide that information to you.

Thank you all. We'll resume next Monday at the same time, between 3:30 and 4.

The committee adjourned at 1805.

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

Substitutions / Membres remplaçants
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