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Mercredi 14 septembre 2005

Standing committee on social policy

Comité permanent de la politique sociale

Adoption Information Disclosure Act, 2005

Loi de 2005 sur la divulgation de renseignements sur les adoptions

Chair: Mario G. Racco
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Wednesday 14 September 2005

Mercredi 14 septembre 2005

The committee met at 1005 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 morning. The meeting was to start at 10. It's just a few minutes after 10. Hopefully we can start in a minute or two, if everybody could have a seat.

Before we start, just a reminder that today's meeting will be from 10 to 12 and 1 to 5; we'll break for lunch for an hour. Tomorrow will be from 9 to 12 and 1 to 5, as I understand it, unless there are any suggestions we can agree on. I guess that will continue until we have debated this bill.

Mr. Ernie Parsons (Prince Edward–Hastings): We may finish today.

The Chair: That's fine, but otherwise we'd better be ready for 9 to 5 tomorrow.

As you remember, the order of business is Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents. We will resume clause-by-clause consideration. When the committee last met on June 7, we adjourned while debating Mr. Jackson's amendments to subsection 48.2(3.1) on page 11, and we'll go back to that. Mr. Jackson, the floor is yours.

Mr. Cameron Jackson (Burlington): Thank you, Mr. Chair. Before I begin, I want to make a couple of quick inquiries. As you know, when we adjourned, we adjourned for several reasons. One was that concern was expressed about the structure of the bill in its current form, and that a disproportionate number of amendments, from my recollection, were being parachuted into the process from all three political parties. This was not a very good environment in which to try to construct a bill, especially one that has had flags raised about its constitutionality and its impact on women's rights in Ontario. So before we move to clause-by-clause, I guess I want to begin by asking if there are additional government amendments that have been tabled.

The Chair: Do we have anybody from the government side? Mr. Parsons, please.

Mr. Parsons: There will not be. Having attained perfection, we see no need to mess with it.

The Chair: Thank you. Mr. Jackson, back to you.

Mr. Jackson: So we have an admission by the government that there were problems associated with the bill, and yet we've seen no—

Mr. Parsons: I don't believe I said that.

Mr. Jackson: No. The media said it, and I believe the minister indicated that there were problems associated with the bill. That also came from the House leader's office. I'm trying to comprehend what the purpose of the additional time was, if not to try to make this bill better with the additional analysis of some of the important legal questions that had been raised and certain procedural issues.

I'm led to believe, then, that the government has made no changes, no amendments whatsoever from the time we last convened and were struggling with these amendments. My concern is that this is not going to facilitate a very fluid meeting, given that we are back to where we were three months ago, when there were substantive areas of concern being raised, which leads me again to issues around how the government plans to implement this legislation.

In the last three months, we have a more enlightened civil service, because previously we were asking them questions about this legislation where they had produced substantive amendments on very short notice. This whole issue of setting up an appeals mechanism and a tribunal—we didn't have any information on that. I'm wondering if we can now have the benefit of their analysis as to how the tribunal will work.

I'm in section 6 of the bill. I'm dealing with crown wards. I'm dealing with issues related to disclosure of information: the age of crown wards and the appropriateness of crown wards receiving information, whether or not a crown ward will have to wait until they're 18 in order to go before a tribunal to explain. I had hoped that this process would start with clarification on how that tribunal will work so that those of us who are crafting amendments are able to do so with the knowledge of how the government will proceed with the tribunal.

In fairness to the bureaucrats, they had to craft that on a moment's notice and drop the amendments in front of

us. I suspect that after three months they have had time to consider it. In that sense, I'd like to be able to get a little bit of information on that. I believe it was a request I made at the time when we were aware that the government House leader had indicated a willingness to defer this legislation in order to have more time to do it correctly.

The Chair: We'll ask the government again if they wish to answer that question, and then I know Ms. Churley wants to participate in the debate.

I should remind all of you that we are on page 11. There is a motion in front of us and we should try to address that. Nonetheless, you did make a statement and ask some questions, so I will ask Mr. Parsons, are there any answers to the questions raised or should I go to Ms. Churley?

Ms. Churley, you're next.

Ms. Marilyn Churley (Toronto–Danforth): I'm happy to have a response to Mr. Jackson's question if that's what you were going to do, but I did want to remind everybody that we are here today to go through all these amendments that are before us. During the course of discussing these amendments, questions can be asked and answered.

Again, we have people who are taking time off work to be with us, as when we sat before in this committee, and I'm hoping that full respect can be shown to those from the community who are here today who want to see this bill move forward.

At this point, that's all I have to say.

1010

The Chair: As Chair, I don't have to remind any members of this committee that we have been getting lots of letters from people urging us to move on. I suspect that's our objective as a group, and we should do that. Nonetheless every member has the opportunity to raise any questions that they have. That's why we're here, and I will continue to try to manage it that way.

Nonetheless I would appreciate if we can debate the motion in front of us. If there are no other comments, I'll go back to you, Mr. Jackson.

Mr. Jackson: For the record, Mr. Chairman, certainly Mr. Arnott and I do not wish to leave any impression, as you have, that our purpose today is to move things along quickly. We're here to do this properly. We have also received substantive information over the course of the summer, legal opinions that the rights of Ontario women in particular, birth mothers and certain adoptees in this province are being severely violated by this legislation. I, for one, do not wish to participate in a hasty exercise, OK?

I will make the grave prediction that I made when the NDP introduced the Arbitration Act, which culminated in the government statements in the same vein on sharia law in the last 48 hours. I warned then that that legislation was going to run into difficulties, as it abused women's rights, and I'm going to say that right now about this legislation. We have an opportunity to correct it.

But my presence here today—I was charged with the responsibility of doing a responsible job with this legislation, not some exercise with a time watch or a timekeeper. For the record, I'm not planning any press conferences today, so I understand the importance for Ms. Churley of getting this resolved today. That's a matter of her record. That's the way she approaches it, and that's fine. I wish to make sure this is done properly and thoroughly.

On this section, I have a letter from Holly Kramer, who has supported both Ms. Churley and the government to proceed with key elements of this legislation. But in her letter to me she has expressed concern about the area dealing with crown wards and their treatment.

Mr. Chairman, this amendment creates an exemption for former crown wards. This exemption is put in place for a whole host of reasons, which I spoke to earlier. Part of the reason for that, of course, is that there are some cases of adoptees who were extricated from extremely abusive situations. Mr. Parsons has spoken eloquently in the House about children who are victims of fetal alcohol poisoning and other abuses by the birth mother during the pregnancy.

Many organizations—and in particular I want to indicate that the London coalition of adoptive parents has presented a very strong and cogent argument that we find some accommodation to protect the rights of crown wards. They have indicated in a letter—and I'll be straightforward: This amendment came out of a concern they expressed. They support it. They might even suggest that it be amended slightly to say that crown wards be dealt with where the safety and well-being of the child or adoptee is in jeopardy. But it's the principle that we need to ensure that these children have certain rights that are upheld here.

So the amendment says, "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...."

Again, the government bureaucrats here have not given us any words of comfort to describe for us at what point a child who was sexually abused—I have a letter from a family where the child still bears immense scars from the torture of the birth-parents. Those birth-parents objected to the CAS taking the child as a crown ward. The child's life was threatened; there have been efforts by the family to connect. So these families are pleading with the government and this committee to ensure that crown wards whose safety and well-being were put in jeopardy be given this veto. We've not heard at what point we start telling a child that they were tortured and about the nightmares they have. Who's paying for the therapy to make sure they can move toward a state of wholeness and are able to understand these issues? You just don't, all of a sudden on their 18th birthday, say, "We forgot to tell you that you were severely tortured, and your father is coming to see you." In my view, here is a clear case, and not an uncommon case.

That's not to say there are cases of crown wards—and that's the point the London coalition of adoptive parents is stating. As Mr. Parsons has stated, there are men and women who bring a child into the world who, out of love, decide that that child should be put up for adoption. There's no challenge here; they just feel the child would be better served to be raised in a family that can better care for it. So perhaps having all crown wards may not necessarily be the answer. I worded it this way because it's the only safe way of clearly covering all the most severe cases of sexual and physical abuse and torture, that those children are not forced into repatriation with their parents, in particular against their wishes.

We have lots of documentation from professional therapists and psychoanalysts who have indicated how damaging this will be to individuals. For people who are victims, the first victim is their ability to empower their own decisions, and here we have the government literally taking their right to a decision away from them. I guess the question I raised with staff at the time was the difficulty in differentiating between those crown wards whose safety and well-being was threatened and those crown wards who were non-controversial to the extent that there aren't these deeply rooted psychological problems.

As you know, Mr. Chairman, we have not really had an explanation of what support mechanisms will be provided. The adoption records department in the province is going to be phased out, so who would have carriage of determining which crown wards who are at risk should have a veto and which would not? I would appreciate the benefit of input from the staff as to how we would implement this kind of amendment.

The Chair: Does the staff have any answer to the question? Otherwise, I'll go to Mr. Parsons.

Ms. Marla Krakower: If you refer to 21l, the government motion that has already passed, with respect to the prohibition against disclosure where an adopted person was a victim of abuse, the definition of "abuse," as we discussed at the last meeting, will be dealt with through regulation. So in terms of your question about how it would be implemented, there's still quite a bit of consultation that we need to do in terms of speaking with the stakeholders around that definition.

1020

Mr. Jackson: I'm led to believe, then, that for three and a half months you've had a section in an act which refers to issues around child sexual abuse and at-risk, but you've not had any discussions as to how we would determine what constitutes that or what wording in which files would be used?

Ms. Krakower: The children's aid societies would need to be involved with us in terms of developing that process.

Mr. Jackson: I've asked the question in the past, and forgive me for asking it again: Will all children's aid societies' records be open and accessible to any applicant who is seeking information?

Ms. Krakower: In this context, the children's aid society would be looking through when a birth parent came forward and asked the Office of the Registrar General for identifying information about an adoptee. In this instance, the children's aid society would go back and look at the records for that particular adoptee. So that particular adoptee's file would be examined by the director or a delegate of the children's aid society to determine whether there was abuse.

Mr. Jackson: For the record, does the 18-year-old who was the victim of abuse have access to their records?

Ms. Krakower: If there is a finding of abuse, a flag will be put on the adoptee's file at the Office of the Registrar General. If the adoptee wants to go back to the children's aid society, upon seeing the flag, and get a sense of why that flag was put on, he or she will be able to do that.

Mr. Jackson: I'm asking you a direct question. Do they have access to their file, not access to the information? That's what I'm asking. It's a legal question. I'm 19 years old; I was a crown ward; I was put up for adoption; I now want to look at my CAS file, to know what was written in that file about my state as a six-month-old.

Ms. Susan Yack: If I could refer you to page 21l, 48.4.4(16) provides that "If the local director determines that ... the adopted person was a victim of abuse ... the local director" would give the adopted person the information the local director considered in making the determination.

Mr. Jackson: OK. Then I'm going to stand down this section until I can get a legal opinion. I want an answer to that question. What I'm hearing is that I'm entitled to the information. I want to know if I have the right to look at the record.

Ms. Yack: It provides for receiving the information. I'm not sure what else you're asking, if—

Mr. Jackson: It's a simple question. There is a file. It looks something like this. It's usually brown. It has a name on it.

Ms. Churley: That's rude.

Mr. Jackson: I've asked her three times, Ms. Churley—

The Chair: If I may be of assistance. If I understood the question properly, he's asking if somebody is 19 today and he or she wants to look at the file, with what we have in front of us today, approved, can he or she get to the file, yes or no? Is there an answer?

Mr. Jackson: Access to the actual file.

Ms. Krakower: Provided that third-party information would be severed, the information would be obtained.

Mr. Jackson: Who makes the decision, the director at the children's aid society or the director of the appeals panel who is in the process of mediating the request for a veto?

Ms. Krakower: Who makes the decision about whether the person can view the files—

Mr. Jackson: Who sanitizes the file?

Ms. Krakower: It would be the children's aid society. They have custody of the file.

Mr. Jackson: So we're not allowing the crown ward, who's now an adult in Ontario, to have a look at the actual file.

Ms. Krakower: No, I didn't say that; I said that third-party—

Mr. Jackson: Are you saying they can sanitize the file? Any of us who have seen freedom of information files know that you can black out a full page.

Ms. Krakower: What I said was that third-party information would be removed.

Mr. Jackson: What do you classify as third-party information?

Ms. Krakower: Information about the adoptive parent or other parties.

Mr. Jackson: OK. This is getting weirder. Give me an example of the kind of information that an adoptee would not be allowed to have about their birth parent.

Interjection.

The Chair: Mr. Parsons, if you don't mind answering that question, would you, please?

Mr. Jackson: Any help would be appreciated.

Mr. Parsons: I'll answer that specific question first, but a file on a particular child would contain information that truly is, some of it, third party. I can appreciate the fear that things be expunged that shouldn't be, and I know that, because we did, in opposition, freedom-of-information requests that brought us back documents from your government with everything but "the" and "it" blacked out.

But in the case of children's aid files, many of the instances of abuse come because of an allegation or a reporting by someone who is assured that they will be anonymous. Without that assurance, they perhaps would not have made the call to CAS. So they've been guaranteed that it be anonymous, and the agency then just doesn't simply find the person guilty but does an investigation and pursues it. I think it's absolutely important that we continue to assure anyone who wishes to report child abuse that it be anonymous. Naturally, the agency may very well have their name and phone number in that file, but that must not be shared publicly.

Similarly, for the adoptive parents, when they apply to adopt there are references that come from community and family members. Some of the references may be good and some may not be, but again, the assurance is made to those who do the references that it will never be disclosed publicly, because we want to encourage an open frankness on the part of the people providing the reference. They would have to be excluded. That would be an example of third-party information.

I can tell you that there are very, very few children who have been abused who don't know they've been abused. We have fostered teenagers, we have fostered two-year-olds who knew that they were abused. This was not an amazing revelation to them.

What I do find fascinating about the dialogue now is the inference that this bill may possibly allow contact to be made between the abuser and the adult adoptee. Folks, it's happening now; it's happening in a totally unstructured, out-of-control way now. We have fostered a number of children who, when they turned 18, the abuser then found them, because there's no legal mechanism to prevent it. This bill actually puts in place a formalization that provides increased protection rather than less protection for that individual.

The desire on the part of birth parents and on the part of adoptees to find each other isn't a result of the debate on this bill; it's a result of them being human. This is happening now. We're playing games if we think that there's a world out there now where everyone is waiting for this bill to go through to start to search out their loved one. It is something over which they have no biological control, I would suggest. It is indeed a natural action. Here we have a bill that will bring some structure, some protection to it.

There was an inference, and it was just an inference earlier, that this bill was delayed over the summer months because the government needed to make changes. I would counter back that this government was prepared to pass this bill back in June, and I believe that the third party was of the same agreement. This bill has, for a number of reasons, been delayed by the stances of some members of this committee. In the meantime, I think we need to remember that we have individuals out there, particularly older adoptees, who know that the clock is running on the opportunity that they will have to meet their birth parents. There are people who have contacted us, there are people in this room who are my age, who know that if they're going to meet their parents, every day presents one less opportunity for that to happen. I think we must never forget who we're doing it for. This is not a paper exercise. This is not a bill to debate, to win media points on. This is a bill that was driven by our constituents in each and every riding in Ontario who made an eloquent and realistic case.

1030

The protection of adoptees that this bill provides for is addressed to adoptees who need protection from something. I appreciate the kind comments made about my passion for child protection.

The references made to natural parents who abused their children by drinking alcohol: I've never used the word "abused" for mothers who consume alcohol during pregnancy. I am somewhat offended by that. I don't consider it child abuse when an individual performs an act which they do not understand to be—much of the effect on unborn children takes place in the first 20 or 30 days. Those parents did not intentionally abuse their children, and I would suggest that the child does not need protection from that individual. So I am offended at the word "abused." My mission on this has been to make them aware, because I continue to believe that if you give people the right information, they will make the right decision.

This amendment that, hopefully, we're going to debate, to me demonstrates a lack of the understanding of

the word "crown ward." I would suggest—and I don't have numbers—that almost every child who has gone through the CAS for adoption has at one stage been made a crown ward. It's a process that in fact makes them available for adoption.

In this group of crown wards are children who have been truly loved by their birth parent, but who recognize that at that stage in life they are perhaps not in a position to provide care for that child. I can think of instances of young mothers—I'm talking 13, 14 years old—who have said, "I cannot provide the care and the love that this child needs." The adult adoptee doesn't need protection; quite the opposite.

The word "crown ward" is far too encompassing. What this bill focuses on is providing protection for individuals who have suffered abuse and need continued protection. This amendment, in fact very coyly but effectively, would serve as a roadblock to prevent the vast majority of parties being able to find each other. I certainly cannot support this. We need only to provide protection for individuals who need protection, not the general population.

The Chair: Thank you, Mr. Parsons. Ms. Churley, you want to say something at this point? Then I'll recognize Mr. Arnott, and I'll go back to Mr. Jackson after that.

Ms. Churley: Yes, I do. I want to speak to this amendment and some of the statements Mr. Jackson made.

First of all, let me say that I think we're back into the situation, and we'd better face it, where we have the Conservatives filibustering the proceedings. I expect we're not going to get very far, and I guess we have to acknowledge that up front. What I would prefer to do would be to go through each amendment in a systematic way, respectful to the staff and to each other as we go through it. I would prefer if we proceeded in that way, but it's pretty clear we're not going to be doing that. So I, therefore, am going to take this opportunity to say a few things in response.

Mr. Jackson says that he is standing up for women's rights. I just want to say to Mr. Jackson that I will not take any lessons from him about standing up for women's rights, particularly after what his government, the Harris government, did, when they were a government, to women and children in this province. So don't talk to me about women's rights, Mr. Jackson.

Secondly, this bill is all about women's rights and young adults' rights, for the young adults to know who they are, their biological background, their health information and, yes, in some cases, adults who were crown wards—and it's a very small minority, as Mr. Parsons said, who actually may have come from abused homes. Yes, we all want to protect those people and those children. But I've got to tell you, if you look at any research that has been done, people carry demons when things have happened to them when they were young. For the very small minority, as Mr. Parsons said, who perhaps didn't know, and they carry these demons around—they don't know where they come from and they have problems and they don't know why—it sure as hell helps them to find out what happened to them, to help them move on with their lives.

I would also say to Mr. Jackson and to the committee, those concerns that are being raised, and I say it over and over again, I have—and there are experts with us here today—file after file after file after introducing such a bill as this five times in the Legislature. There is evidence across jurisdictions across the world that deal with these particular questions: England since the 1970s; Western Australia recently changed its adoption disclosure laws, which had a contact veto and a disclosure veto. They have found out after research and studies that they don't need the disclosure veto, and they've just officially removed it.

I would say to people who are expressing those concerns that if you look at the body of research, you will see that the evidence is there. We're far behind, which is too bad, but we're lucky in that the evidence is there; the questions are answered. If you look at that evidence, you will see that the concerns that you're raising have not been a problem in those other jurisdictions; on the contrary.

Mr. Jackson mentioned sharia law and faith-based arbitration. It's not part of today, but he's bringing it up in terms of women's rights. Just to set the record straight, I think it's important to say that the NDP did not bring in faith-based arbitration. It's been part of the Arbitration Act since its inception in Canada and Ontario. The NDP followed on Mr. Ian Scott's beginning of the federal government's harmonization of the Arbitration Act across this land. Faith-based arbitration has been allowed since, I think, the 1920s. I'm sorry that I'm going into that, but Mr. Jackson raised it and was allowed to get away with it in this context and I thought I would set the record straight. In fact, Quebec was the only province at that time that opted out. All of the other provinces, including Ontario, just harmonized the Arbitration Act—just to set the record straight.

Finishing up here, I would really urge us to move on and go through these amendments one by one. In a democracy we can do that, and then we can go into the Legislature, debate it and have a democratic vote.

The Chair: I recognize Mr. Arnott next, if he wishes to speak. The only thing I want to say before recognizing him is that I have been very flexible in allowing all the members to speak their minds. Of course it's going to take longer, but if you disagree, let me know; otherwise we will continue as we have.

Mr. Ted Arnott (Waterloo–Wellington): I actually plan to be brief, Mr. Chairman. Given the fact that this committee has not sat for quite a number of weeks because of a decision of the House to put off the continued discussion and deliberation of Bill 183, I think it is perhaps appropriate that we're having these preliminary comments in the context of this amendment that was put before the committee before the summertime.

I would certainly indicate my interest in this motion that Mr. Jackson has presented. In following the dis-

cussion, I think some of these are important points that have been raised by all sides. I'm a permanent member of this committee, but I've been subbed off on a couple of occasions because another one of our members, Mr. Sterling, has a great deal of interest and expertise in this issue and has wanted to participate as well. But I've tried to follow it as best I could.

The comments of the privacy commissioner, which we haven't talked about yet in today's sitting, are issues that we need to keep in mind, I think. Her continued interest in this issue and her statements are issues that we need to consider. She is the officer of the Legislature who is responsible for the administration of privacy issues, and I would hope that no member of this committee would suggest that her views are irrelevant. As we know, she has called for the idea of a disclosure veto to be included in this bill. It's something that I think we do need to consider over the next couple of days in a very serious way.

I was rather surprised to hear one of the government members say in a rather flippant way that the government had achieved perfection with the amendments that had been put forward over the last number of months and that, even though there's been ample opportunity for the government to reconsider some of these issues, they feel that they've achieved perfection. I would beg to differ, I'm afraid.

In response to one of the questions that Mr. Jackson put to the staff and to the government members about the issue of the children's aid files and access to them, the answer was brought back from the government member that in fact people who inform on issues of abuse deserve privacy. Obviously, that's something that should be expunged from files if it's going to be presented to anyone. It made me think of the crux of this issue. Of course, there was implied, or in many if not all cases, guaranteed privacy when women gave up children for adoption years ago, and certainly the government has made a decision that that promise or that commitment or understanding is meaningless now and has therefore brought forward Bill 183.

I'll be supporting this motion.

1040

The Chair: I'll go back to Mr. Jackson.

Mr. Jackson: I propose an amendment that subsection 3(1) be further amended by adding after the word "crown" the words "where the safety and well-being of the child adoptee is in jeopardy." It's the one that's in front of us, the very first amendment on subsection 3(1). It's section 6, subsection 48.2. It's the one, "Exception: former crown wards," and the words to be inserted are, "where the safety and well-being of the child adoptee is in jeopardy," before being adopted.

The Chair: We need it written down, if I could have it. Give us each a copy. Do we wish to continue debating it, or do you want a few minutes' break until everybody—

Mr. Jackson: I think it's clear. It's not a complex amendment. Mr. Parsons referenced that it embraced all crown wards. In my preliminary statements about this amendment, I indicated that I was casting too wide a net to give an automatic exemption. I support the principle of a veto; I honestly do. I'm personally not having as much of a hard time with retroactivity, but I'm not the minister. At this point, I'm merely trying to protect a cohort of individuals who, through my personal experience, go through enough trauma without having to be forced to go before a tribunal.

Again, this good counsel comes from a variety of quarters: several legal minds who have written to this committee, also the London coalition of adoptive parents, who presented before the committee and then made additional statements. Just briefly, here's what they had to say in their letter to us:

"As you may recall from our personal stories presented during the recent public hearings into this bill, many of our children have come into care as a result of being apprehended. Many were sexually, physically or emotionally abused. Many were neglected and abused in utero by exposure to drugs or alcohol. Many, unfortunately, had ringside seats to the violent acts birth parents inflicted on one another. These are very different types of crown wards. These are the adoptees who may need protection from contact initiated by a birth parent."

They go on to give other examples.

Again, I'm very concerned. Mr. Parsons has shared with us the fact that the person who discloses the abuse, the person who contacts the children's aid society, if it's one of the birth parents, is protected. Now, they're not protected because of any inherent right to privacy; they're protected from litigation. This is a legal issue involving the children's aid society and the documentation that occurs in these documents.

I feel very strongly about the issue that these reports will be vetted for the protection of other individuals who in fact were responsible for the children's aid society making decisions about their adoption. It seems hypocritical, and it seems ironic, that we, in this legislation as it sits, are more concerned about protecting the individual who caused the adoption and are not concerned about the privacy rights and the right to access to information for the victim of that violence, in the case we have before us with crown wards, where the safety and well-being of the child adoptee is in jeopardy.

I wish the committee could consider this further, because I think we are opening up emotional scars here without the appropriate support. This organization and many others, Holly Kramer included, has recommended that we provide for counselling in these instances. Again, I've put forward amendments in this regard. I caution, I warn and I invite the members of the governing party to be sensitive to this issue, that people should have the right of access to counselling. An 18-year-old is going to be told, maybe for the first time in their life, of the horrendous medical records, why they spent the first year of their life in a hospital recovering from broken bones, and they need counselling before their assailant, who may be their father or mother, shows up on their door-

step. There is a misfit that suggests that the children's aid society somehow is going to be monitoring an adoptee. They're not. They have a file that's been sealed and put away, and somebody 18 years later is going to dust it off, open it up and have a lawyer look at it. The average CAS in this province has anywhere from three to eight lawyers working either on their staff or in their immediate access pool. This is an extremely litigious process.

In this instance, the viewing is not to determine the sensitivity of the applicant to this information, because the CAS wouldn't even meet the person, wouldn't be interviewing them, wouldn't be asking, "Have you received counselling? Do you know?" The trigger will be that the CAS will be given a notice that a birth mother and a birth father want the records of their child. There is a consequence to that. There is no mandate for the CAS to make sure that the now 18-year-old has received sufficient counselling to be in a position to exercise this limited right to come before a tribunal of strangers and argue, "Do you know what? I really don't want the man who nearly killed me looking at my records. I don't want him to know who I am. I do not want him to disturb my adoptive parents, who are now senior citizens and still living in the same house from which they adopted me."

I don't think this has been well thought through on the part of the government in terms of how this is going to work, and I remind committee members that the trigger for this is the fact that the government made a minor capitulation to the legal principle that a veto must exist for persons who have been sexually abused and who are at risk. It's worthy of note that the minister has put on the record publicly that there is concern that there may be fatal consequences to certain disclosures, and with that knowledge there had to be some mechanism.

So now that we've embraced this narrow window of a veto—I see considerable flaws in it; the government has said it doesn't know how it's going to work—we are crafting who can queue up and who can be eligible for this, and I think we do a great disservice to crown wards, in particular those crown wards who were the victims of these kinds of abuse.

The CAS will act predictably and protect its legal backside. I don't fault them for that; that's the way the system exists today, and this legislation isn't going to change the attitude of the lawyers at the CAS. But they will vet those files to determine that no one can get sued, in particular the staff in their employ. But the purpose of this is to protect the individual who feels that they would be emotionally scarred should they be exposed to an automatic access. I'm not going to debate this whole issue of no contact; that will come up later. I don't think it will work. Anybody who's had anything to do with women who have been stalked or who have had the experience of sexual predators knows that peace ordinances do not work in this province, that predominantly male police departments don't enforce them. That is a fact of life.

1050

So if the effect in law is that they don't work, then we have to be very careful—

Ms. Churley: On a point of order, Mr. Chair: Sitting here as a birth mother and with adult adoptees and birth mothers sitting in this audience today listening to this, to have people from the adoption community from all sides be compared to criminal stalkers is absolutely outrageous and beyond the pale. I would ask Mr. Jackson to please be careful what he's inferring here and to withdraw that accusation and comparison.

The Chair: It's not a point of order, but the question has been placed.

Ms. Churley: Let's be civilized here.

The Chair: Mr. Jackson, do you have any comment on the question? Otherwise, proceed.

Mr. Jackson: Mr. Chairman, now that I've been asked to comment further on it by Ms. Churley, I would indicate to her that if she had taken the time to read the letter from Bruce Pardy, Associate Professor, Faculty of Law, Queen's University, making reference to this issue of whether or not a contact veto has any effect in law, it speaks very eloquently on legal grounds to that issue. Richard Owen, the executive director of the Centre for Innovation Law and Policy at the University of Toronto Faculty of Law, raises the same issue.

Ms. Churley: I have asked you to withdraw it.

Mr. Jackson: You may wish to attack these people, and I know you've attacked Ann Cavoukian, the Information and Privacy Commissioner of Ontario, who has raised a similar concern about its net effect on vulnerable individuals. So I won't apologize for it. In a free and open process, which I believe the Chair is still managing here, and I thank him for that, I am able to read into the record those learned presentations that form the complete body of information that guides this committee in making its decisions. We should be guided by pre-eminent legal concerns. I wish Ms. Churley hadn't interrupted because I said I wanted to set it aside. But if she wishes me to have a fulsome discussion on the issue of contact veto, then I will.

Ms. Churley: You're just being silly.

The Chair: We know this is going to be a very hot day. We heard comments on both sides; we heard the answer. Mr. Jackson, you still have the floor; then I'll recognize Mr. Parsons.

Mr. Jackson: Thank you, Mr. Chairman. I've read into the record the comments from the London coalition of adoptive parents. I believe I've referenced, without going into a lot of detail, the Ontario privacy commissioner, and indeed, all the privacy commissioners across Canada who have expressed concern and have highlighted this amendment as a necessary amendment to protect the most vulnerable. So I would encourage members to support this amendment to the amendment.

The Chair: I recognize Mr. Parsons, and then Ms. Churley, please.

Mr. Parsons: I'm a long way from the most experienced member on this committee, but I think I do understand the system now, which is, it's necessary for me to speak in order for the official opposition to then run another 20 minutes to fill the time. The object is, I

sense from the official opposition, to simply delay this bill going through. Perhaps I'd be happier if we'd be more honest and rather than have all these people come in and make the trip to sit here, if the official opposition simply said, "We're not going to co-operate; we're not going to do it." But it wouldn't get the same amount of media as this.

I struggle a little bit with the passion for child protection when Mr. Jackson's government, while on his watch, cut CAS budgets, all money for protection programs for children's aid societies' activities were eliminated and the adoption disclosure unit was drastically underfunded. I'm more concerned with what people do than what they say, and I have difficulty with the passion that I've seen develop this morning for this.

This amendment is a great amendment because it actually was put forward as a government motion and passed, which provides for protection for adoptees who need protection. It's in place. The committee has already carried motions 8 and 10a. So this is redundant and absolutely pointless. The only purpose that this thing achieves, whether it's intended or not, is to delay it a little bit longer. But I again remind them—from the government viewpoint to the official opposition—that every day this bill is not passed, the unauthorized contact that they're so concerned about is taking place. The odds are very high that somewhere in the world today someone is showing up—we have had that. We have had our foster children turn 18 and the abuser show up at the door, and you know what? They broke no law. They did nothing wrong. They did nothing wrong to appear at their child's school, or to encounter them in the street.

At the moment, it's a Wild West out there. We don't seem to think of it from that viewpoint, but it is totally unstructured. This would actually put in place a provision that that can happen, and that if someone were to show up, they will have broken a no-contact veto; they will have broken this law. So if you want to truly protect the children—because I can tell you, from having watched, how difficult it is for an 18-year-old girl to open our front door and find her abuser standing there. The minute she turned 18, the current law provided no protection from that happening—no forewarning, no nothing.

Chair, I urge the official opposition members to rethink the strategy of stretching this out for publicity and to think about the individuals out there, both those who need our protection and those who need our support, because just as the abuser showing up at the door is emotionally difficult, the foster children and the individuals we've spoken to who have met their birth parents have found it emotionally charging and positive. It has enabled them to not go through life with questions like, "Did they not love me?" because that's got to haunt some of them. For thousands and thousands of individuals, this will give a freedom and an answer and a new path in life.

All of the games we're playing simply block the people in Ontario who want their fundamental right of knowing who they are. This debate, as it's happening today, simply continues to remove or blocks the rights of far too many people. One is too many; we're talking thousands. I am disappointed that we've come back together, after having had two and a half months to get many of these questions answered, and we see an amendment come that is a replication of a motion that has already been passed by this committee.

Ms. Churley: I would concur with Mr. Parsons that if we're not going to take this seriously and get through the amendments, it would be better if the official opposition would just be clear and honest and say, "We're not willing to proceed with this," and go back to the House leaders and try to find a process that will work, because this is wasting all our time. I think it's extremely disrespectful. I know all parties play games at many times over bills that we feel strongly about, including Liberals, Conservatives and NDP, but this bill is a long time coming. It's not new. As I said, it's very similar—although I have some amendments to improve yours so it's more like mine, too. There are a few problems. I want to get to them, though, in a serious way.

Mr. Jackson has supported this in the past—in fact, all my bills which didn't have a disclosure veto at that time. It has been having a huge impact on people's lives for many, many years. It's not new; it's just that it's a government bill now. Before, it was a private member's bill. We had committee hearings, remember? Mr. Parsons was there. A lot of those questions were dealt with at that time. We went through the committee hearings. We had deputations.

This issue has been before us since the 1970s—the Garber report recommended disclosure reform at that time—so it's not new, and it has an impact on so many people's lives that it really is not fair to be approaching it in such a disrespectful way. I would therefore ask if the Tories would consider, given their position, just telling us if they're not willing to go through the amendments so we can find another way to deal with this.

1100

I want to talk to this amendment. First of all, I'd like to reiterate, one of the problems is that many, many children become wards of the crown before they're adopted. They don't come from abusive situations but, as in my case, come from situations where they're made wards of the crown and then adopted. It's a process that you have to go through. Therefore, if this amendment were adopted, that would mean that most adults today who were adopted under that system would all be caught in that particular amendment.

The other thing I want to say, and it's absolutely critical and I'm going to put it on the record now for other amendments which will come forward, and Mr. Parsons has referred to it repeatedly, is the contact veto. Let me say again, having researched and been one of the birth mothers and been around this issue for a very long time: When a birth mother finds the location of her son or daughter, or an adoptee finds the location of his or her birth mother or father, after so many years perhaps of searching for each other, one of the things that happens is that the last thing either party wants to do is do some-

thing that might alienate the other party. People so desperately want it to work out that if there is contact, they want to make sure—and I certainly went through that process with my son, although, as Mr. Parsons said, there was nothing stopping me, as soon as I found out where he was, from just knocking on his door. But I didn't do that. I first wrote him a letter to make the initial contact. He wrote me back; we wrote to each other for a while. He wanted some time—I was dying to see him. I got a photograph, but I waited until he was ready for that contact. And in some cases it is true: Some people don't ever want the contact. As we keep saying, this bill is not about legislating relationships; it's about legislating information, people's human rights to have information about themselves. In terms of people perhaps stalking each other in a criminal way, one of the reasons why it has worked so well in all jurisdictions that have a contact veto is that people just do not stalk each other. There's a very respectful process that people go through.

The thing that I want to put on the record is a recent alert for birth parents that came out from the privacy commissioner. It says, "Adoption Identification Alert." If you look at this, you will see that it proves what I and the adoption community have been saying all along. In fact, it was we who disclosed this information in a press conference, and that is, birth mothers were never officially promised confidentiality. Maybe some social worker said, "Oh, you can go away and forget about it." What a joke that was. The fact is that there was never an official confidentiality promise.

The privacy commissioner talked about not allowing retroactivity. We made it clear that in fact birth mothers'—and fathers', in some cases—but mostly birth mothers' surnames were on the adoption order given to the adoptive parents. That was in the 1960s. I know that my son's parents had my name. It's a very unusual name, too. If he had wanted to find me at that time—he was seeing my name in elevators. I was the minister responsible for elevators at the time; remember? "Marilyn Churley" in all the elevators. He told me after we reunited that he used to see that and wonder, "Could that be my mother?" because it's a very unusual name. But he thought, "No, I couldn't have a mother whose name would be on elevators in Ontario." He knew my name. He was born in 1968. Therefore, some of the issues raised around the rape victims by the Conservative Party and others, who would be, by now—we're talking about people born in the 1950s and 1960s—a lot of those people would have access to their mother's surname anyway.

The privacy commissioner wasn't aware of this. Most people weren't aware of it. We alerted everybody to that to prove that it is a myth that there was confidentiality. There never has been. It has been a mixed bag. Even after some areas stopped using the surname, some didn't, and she acknowledges that. Then, somebody who says she doesn't believe in retroactivity in this bill is going back to people retroactively, saying, "After our research, it was we who revealed it"; but after their research, they've discovered that there's an inclusion of the birth name in the adoption order and they're now putting out an alert—this has been out there for years—"Consideration of harm arising from disclosure."

My heavens, these names have been out there ever since the day these children were given up for adoption. I have to say that those who were seriously looking—particularly the adult adoptee, who in most cases would have access to those names and would have knocked on those doors of the birth mothers, who are now in their 70s, who may have been a small minority, who may have been a rape victim—would be finding them by now if the persons wanted to find them, because there's never been confidentiality; never. The reason we need this bill is that a majority of people right now are finding each other anyway, as I did with the help of Holly Kramer through Parent Finders. With the Internet, with the surnames on adoption orders, with the searches that are going on, people are finding each other.

For whatever reason, there was a period of time when adopted children were given a number on an adoption order, and that was a dark period in our history, because there was a minister, as I understand it and have been told, responsible at that time who was opposed to adoption disclosure. This bill is necessary to help those. Actually, for a brief period of time, some in rural areas were just putting a number on an adoption order, or, for whatever reason, a very common name, or the person didn't have the money or the ability to hire, as I did, a private person to look with the identification I had.

That's another thing. I found my son through so-called non-identifying information. Without names and things attached, there was enough information. I had enough money to get somebody to do the search for me. I'm going into great detail here because I think it's very important to set the stage to make people understand that people are finding each other in droves. This legislation is important for those who by now are a rather small minority of people who cannot and need the assistance. Furthermore, it's just a basic human right for people to be given access to their own personal information.

Finally, therefore, I put this on the table again: There are those who believe there shouldn't even be a contact veto, because in normal circumstances there's no contact veto to stop an abusive parent from showing up at any doorstep, even if the child is not officially adopted, or any other. There's no official legal way to stop people from contacting each other unless there are serious criminal problems. There are people, therefore, within the adoption community who believe there shouldn't even be a contact veto. But we've got the contact veto in to protect those who we all believe need to be protected. We've got that there, and it works. It is working in other jurisdictions. In fact, given everything I just said about the ability, and the access that's already out there, this contact veto would improve the situation for those who believe there is an issue around unwanted contact which doesn't exist right now.

Therefore I would say that this amendment before us, given all of the body of evidence that we have, is not

needed. We need the legislation to pass, and we need the contact veto to deal with the concerns being expressed by the official opposition.

The Chair: Thank you. Is there any further debate? If there's none—Mr. Jackson?

Mr. Jackson: Again, I said I don't wish to debate the contact veto at this time, although I listened carefully to Ms. Churley's 14 minutes on the subject, as always.

Ms. Churley: You're one to talk about 14 minutes.

1110

Mr. Jackson: You've actually spoken longer than I have since the Chair hit the gavel.

Interjection.

Mr. Jackson: Well, I don't think that's really appropriate.

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

Mr. Jackson: Thank you, Mr. Chairman. I think the member said I'm a disgrace. Do you have control of this committee?

The Chair: Ms. Churley, if you said that, I'm sure you will want to withdraw.

Ms. Churley: Oh, absolutely. I withdraw. No problem.

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

Mr. Jackson: Thank you. I wish to go back to this issue of access to the CAS files. I have a note from Holly Kramer, who expresses concern about having access. I'll ask a general question as it relates to this amendment: Do we retain, anywhere in this legislation, the right of access to the files in the CAS? If you could point me to that section.

The Chair: The section is?

Mr. Jackson: Either in amendment, or one that's passed; either one.

Ms. Krakower: It's in 21l.

Mr. Jackson: OK. I have the page.

Ms. Krakower: It's three pages into that. It's subsection (16), under "Information for birth parent, adopted person."

Mr. Jackson: Very good. Can you explain to me why you're only making the files available to those who are the subject of abuse, and not to Ms. Churley or Ms. Churley's son? Would someone help me to understand that? The bureaucrats are looking to the politicians for an answer here.

Mr. Parsons, you're the expert on the CAS. Do you not feel that everyone should have the right to this information, not just those who were victims of abuse?

Mr. Parsons: No, I don't. I have no sound professional opinion. Social work is not my field. I'm an engineer who has dabbled in it as a foster parent. But I know that in the foster children's records, there is information that the foster parents may have recorded, for example.

I can think of many, many cases where the foster children came to us, and I'll be blunt. There were a number of children the agency has asked us to foster, and a week or two into it I've said to my wife, "This is a mistake. This is more than we have the expertise to deal with"; and a year later we've said, "What a privilege we've had of working with this child." Were you to look at the record that we wrote for the agency, believing it was between us and the agency—it would be very discouraging, I think, for that child to read it. But I also know, as a foster parent, I wrote it not for public consumption, not for that particular child.

The records by nature, if they're going to be productive for the foster child, must allow people to be very open and frank in the recording of them. I would suggest that the record of whether a foster parent had a high or low opinion of a child is immaterial to that child. They need their birth information; they need medical information. But to simply open up the file, I don't see that as productive.

The current practice now through the adoption disclosure is for the CAS to provide as much information as they can. But some of these files have been three, four and five inches thick. Given the nature of it, it would be like making a person's medical files open to the general public. Many of these files also contain information on others. They may contain references to other foster children who are in the home but in fact are not siblings or related.

I guess my initial reaction is, why? I have never perceived a pressure. Certainly the adoptees I've had contact with know specifically what they're searching for. I have no recollection of them saying, "I simply want my file open." They want the information in the file, not the file. I don't see a point in making it open, other than that it has helped to prolong this committee's deliberations by a few more minutes.

The Chair: Any further debate?

Mr. Jackson: I was around in 1987 when the late John Sweeney, in working directly with the adoption community and the David Peterson government, made sure that these rights that were hard fought for on the part of adoptees and birth parents so that they could do the kind of matching that has been occurring in the province for quite some time—it's my understanding that this information is not going to be made available or retained in a central registry, that access to that is a right that some people currently enjoy, and that this legislation is taking it away.

The reason I raised it is that my original motion had a subsection (3.3), which read, "An adopted person who was a ward of the crown before being adopted and who is at least 18 years old is entitled to information in his or her CAS adoption file, and the society shall give it to the adopted person upon request."

I didn't know it at the time, but through my discussions with persons who are helping with these matches, I learned that this was one of the means by which they were able to help: by looking at the adoption records, the licensee records and the CAS records.

But apparently under this legislation—I don't know another way to say it, but I would hope that it's not a cost-cutting exercise to reduce the amount of services that are going to be available to assist adoptees. It's great

to have a piece of legislation that says I'll have disclosure, but if the instruments of disclosure are not readily available—and they currently have them in Ontario; without an unfettered right to access, but they're still available—then we have a problem. Again, I'm raising this because I've been warned by proponents in the adoption community who want this retained and we're not finding it anywhere in the system.

I listened carefully to Mr. Parsons's concerns and I'm still trying to evaluate those. Perhaps he was unaware that that was a right that John Sweeney had given when he did the review back in 1987. It's being removed here, and I just would like an explanation. The bureaucracy passed on answering the question, and I found that passing strange, but they have the right to remain silent.

Ms. Krakower: Perhaps I can be of some assistance.

The Chair: Maybe the staff can clarify it for us, and then I'll recognize Ms. Churley.

Ms. Krakower: There is a provision in the bill that would allow for information to be shared by the children's aid society. It's in section 14 of the bill, subsection 162.3(2) of the act, under disclosure of information by a society, which says, "A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed."

Currently, the children's aid societies do provide non-identifying information. It is anticipated, and it has been the policy intent, that they would continue to do so, and the regulations would be fleshing that out with the authority that's provided in the section that I just read.

Mr. Jackson: What about the adoption disclosure registry as the repository of the quantum of information that can come from adoption records, adoption agencies, as well as certain licensee files?

Ms. Krakower: That function will now be taken over, or would be taken over, by the custodian. In the case of—

Mr. Jackson: What's the custodian?

Ms. Krakower: The custodian is referred to in the bill. That's the body that would also be providing non-identifying information and some other functions as well, in terms of the provision around abused crown wards: They have a role in that 21l that we were just referring to. As well, there is another government amendment that will be touched on a bit later that has a role for them in conducting searches.

1120

Mr. Jackson: So are we dismantling the adoption disclosure registry?

Ms. Krakower: The adoption disclosure registry won't exist, but there will be a custodian of adoption information.

Mr. Jackson: A custodian adoption information service?

Ms. Krakower: Just the custodian of adoption information. It's already in the bill. Their authority to provide information is also in that same section that I was just reading. Section 14 of the bill, subsection 162.3(4), also gives the custodian authority to pass along non-identifying information. It says, "A designated custodian under section 162.1 shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed."

Mr. Jackson: But it's not a right as set out in the bill, in terms of access to information.

Ms. Krakower: The policy intent is for the custodian to carry on that same function with respect to providing non-identifying information, as is currently carried out by the adoption disclosure unit. So the adoption disclosure unit would continue to provide that information in cases where people have gone through a private adoption, and the children's aid society would continue to do that where it has been a public adoption.

Mr. Jackson: So where will all the records currently at the adoption disclosure registry go to?

Ms. Krakower: They would go to the custodian.

Mr. Jackson: OK.

Ms. Churley: I just want to comment on this, because this is an area of concern. I agree with Mr. Jackson on this point, and it is a concern that has been raised by the adoption community—both points that Mr. Jackson raised. I think what he was referring to I talked about earlier, and that is the so-called non-identifying information that is made available now to adoptees. The fact that it is no longer going to be provided is really problematic.

Let me give you an example. If you have somebody with the surname Smith, and that person is searching and that person is 30 years old and all they've got to go on is the surname Smith, that's why this legislation is really important, so they can have access to their original birth information. But in some cases it's going to take the combination of the two: the non-identifying information, which gives little clues and hints about what business the adoptive parents might be in or what their heritage is and some other little facts that come together to help locate that Smith somewhere in Canada. They may not be alive any more; they may be living anywhere in the world. It's really critical that that information still be provided. So that's one piece; I have an amendment on that.

The second thing is the access of adoptees to their files. I know in British Columbia and other jurisdictions that the file is available to adult adoptees with certain identifying information blacked out. I'm sure it's a resource problem that was being considered here, but I think it really is critical that we revisit the non-identifying information and the file with certain things blacked out. It has worked very, very well in British Columbia and other jurisdictions.

Mr. Jackson: Is that the NDP amendment?

Ms. Churley: I think so. I'd have to look again now, but I think it is. There is an amendment coming up dealing with it.

Mr. Jackson: Both of us covered off the counselling, but this is the identifying information.

Ms. Churley: Yes.

Mr. Jackson: It's sufficient that it's in there.

The Chair: Any further debate? If there is none, I am going to take a vote on the amendment to the amendment, which, if necessary, I would be happy to read. Otherwise, I'll take a vote.

Mr. Jackson: Recorded vote.

The Chair: A recorded vote on this.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry. Therefore we go back to the original motion, section 6, subsection 48.2(3.1). Is there any further debate on that? If there is none—yes, Mr. Jackson?

Mr. Jackson: I just wanted clarification from staff, then, that I've worded this correctly: "may register a notice authorizing the registrar general to give the information described in subsection (1) to a birth parent." Is that the appropriate body to provide that?

Ms. Krakower: That's correct.

Mr. Jackson: So the registrar general has the authority to go for the CAS file, or has the file? Or is the registrar general standing in the shoes of the custodian?

Ms. Krakower: The registrar general would have the information, but in the case of knowing about abuse, that would be the CAS. They would find that out through the custodian.

The Chair: I will now put the question. Shall the motion carry?

Mr. Jackson: Recorded vote.

The Chair: Recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We're going to page 13. It seems that page 12 was withdrawn. Mr. Jackson, the floor is back to you—subsection 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 subsection after subsection 48.2(3):

"Disclosure veto

"(3.3) Despite subsection 3, the registrar general shall not give the applicant the information described in subsection (1) if the adopted person has registered a disclosure veto."

The Chair: Thank you. Is there any debate on the amendment?

Mr. Parsons: This is an amendment which in fact totally defeats the purpose of the bill. I guess it's allowed procedurally, but I thought amendments had to be somewhat compatible. This negates virtually every other aspect of the bill. It negates what the community has called for. It negates what I believe is the will of the people of this province, and I certainly cannot support it. It's very cute, but it's destructive.

The Chair: Any further debate on this amendment?

Mr. Jackson: Yes, Mr. Chairman. I do believe it's in order by virtue of the fact that the government has recognized the flaw in its legislation and has created a mechanism where a partial veto can occur. The government realizes—first of all, it's a matter of record that this legislation in its current form, in the absence of a veto, will be the subject of a Supreme Court challenge, and that the bill will be delayed in implementation through our court system. That was eloquently presented by several legal minds and members of the adoption community themselves, for whose benefit they were acting.

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We have received a substantive amount of new information during the intervening period of three months, or almost four months, since we last met. We have had the unanimous legal opinion of every privacy commissioner in Canada, who indicate that a veto is essential to maintain the integrity of our privacy laws. I think it's very clear that a substantive amount of legal thought has gone into this. This is not an emotional issue. Many of the adoption reforms in Canada occurred prior to the implementation of privacy laws in each of the provinces. Ontario is doing it backwards. We're doing our adoption legislation post-privacy legislation, and that obviously has created some unanticipated legal opinions on the part of the government and of others.

However, the overwhelming body of legal opinion in this area leads me to suggest that this isn't just an emotional issue involving women who wish to have their privacy rights protected, who are struggling to determine why the government would jettison their rights to privacy, yet, as has been indicated in previous discussion, the privacy protection of those who have reported abuse, who were engaged in the abuse, or foster parents who may have recorded opinions about the child whom they were adopting—they all enjoy these rights. But somehow we have failed to recognize the rights of the individual who was either the subject of the adoption or the woman who made the extremely difficult decision to put her child up for adoption.

These legal opinions that I've referenced earlier—Queen's University Faculty of Law—each member has received them. They have supported the position and the opinion of Ann Cavoukian. They argue in three specific areas: the retroactivity, which is not before us, so I'm not going to debate that—"the substantive right to privacy versus the procedural opportunity to plead" was the legal definition, and I just want to briefly reference this:

"Pleading one's case to a board in order to justify keeping information secret is not the next best thing to a right to privacy. Instead, it is quite the reverse—it implies that personal information is not one's own, and that it belongs instead in the realm of the bureaucrat, who will decide what should be done with it." That, in my view, and the view of our caucus, is what deeply offends the whole principle of the privacy act in our province. It's not an accident that every single newspaper in the province of Ontario has editorially stated that retroactivity is complicated, but the absence of a veto violates a citizen's right in our province. We are impelled to raise those issues in as strong a voice as possible.

They go on to say, "The right to privacy is a personal right. It does not depend on whether one can justify it to a government official. The reasons for keeping one's personal information to oneself are as private as the information itself." This applies to our medical records; it applies to a whole series of records. We've even heard this morning that there are rights enjoyed in the adoption process by those who aren't a direct party to the process, and yet we would violate these simple principles. It's no secret why Ann Cavoukian, the privacy commissioner, has stated—and I will go further to say that she has engaged in a public forum, much in the way that politicians feel uncomfortable about, but we have had others do it, such as when the environmental commissioner steps out of the darkness of his office and argues that there is something wrong for the citizens of Ontario. In my 21 years here, I have seen many bureaucrats step into the light of public opinion to argue articulately what rights are being abused or what risks society is being put through on the basis of any one or other issue.

I will quote from this letter later on, as it relates to the contact veto. It is the government's argument of "Don't worry; nothing's going to happen." When you listen to the government on the contact veto issue, they only talk in terms of this fearmongering and the risk that people are out there stalking. They're missing the principle that the contact veto still gives to the other party all that information, and that point is made very eloquently in these three legal submissions that the committee has been given.

It simply states that those vetoes haven't worked in other applications in the law, but they are still a violation of a person's right to privacy and their information. So the existence of a contact veto in and of itself may constitute some sort of protection in the mind of the government. You're trying to protect people from a violation of their privacy rights that they may suffer, and there's an acknowledgement in this legislation that they could.

I never raised the issue and I wasn't as aware of it, about the honour killings among certain cultural groups when it's disclosed that they had a child out of wedlock or for other reasons. I didn't raise this. The minister herself raised it in front of the media, and there are legal concerns when the state specifically puts someone, in those rare cases, in harm. The harm here is predominantly the right to the privacy that's being surrendered.

The other document that all members were submitted was a rather extensive document prepared by the privacy commissioner. There are, by my count, over 400 cases of individuals who contacted the office, expressing concern about this legislation. The consistency was that their privacy rights were being violated and that a veto should exist.

These individuals have been characterized by some at this committee table as hardly credible and hardly worthy of consideration simply because they don't, in all cases, attach their name to the document. I can only say that this, in and of itself, explains the importance of privacy legislation in this province. That is part of the privacy rights that they have today. That's what they have, and for any one of us in public life to say, "Well, if you won't put your name to it, I'm not going to acknowledge it or give it any weight or any value"—this is not a court of law. This is not where you can make an accusation about someone and then hide behind the anonymity, and legal consequences and criminal prosecutions occur. There are clearly laws around that.

This is entirely different. This is to say that a person's democratic right to speak to their government is being denigrated by virtue of the fact that they fail to come before the committee. We had some very courageous people come before this committee who said, "I do not want my parent"—or "I do not want my child"—"to know, and these are my reasons. This is very difficult for me to come forward here, but someone had to come forward and speak for this community."

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Much has been said, again, about the issue of the research to date in this area. I, for one, do not believe that a disclosure veto would be heavily used in this jurisdiction, as in any other. I think there is fairly credible research on those numbers and their impact on the affected persons. But there is clearly very little credible evidence on the issue of contact vetoes and how effectively they work. That was submitted to the committee in a paper that was prepared over the summer. That document has been shared with each and every member of the committee—A Review of the Literature on Adoption-Related Research—submitted with a review in the United Kingdom and Australia. I would hope that all members of the committee had an opportunity to examine it. Why? Because it raises serious questions on the defence that you must support a contact veto because it will work. Clearly, this evidence doesn't bring you to that full conclusion.

This is a very important motion. It's probably one of the most important motions. As I've said on the record, I'm not having as great a difficulty on the retroactivity of it. Ms. Churley knows I worked alongside her on adoption legislation on four separate occasions over many, many years. I support the principle, but I believe fundamentally that, in this province and in this country with privacy rights as they are, my medical information is as important to me as those decisions I made about giving up a child, or those decisions that I make about protecting

my mental health from someone who so severely impacted it that even at age 18 I'm still suffering. They have the right to be protected from that, just as they have the right, armed with the knowledge of their medical information, to protect themselves as well.

I just would have hoped that more members of the committee would have looked at these submissions that were made over the course of the summer. I was a little dismayed that the minister spoke to the media over the weekend as a precursor to these hearings, saying that under no circumstances would there be amendments in this area. Those signals were truly unfortunate. They are her right, as the minister, to provide those kinds of parameters and guidance to her caucus. However, I believe that we are going to get into nothing but trouble because of the legal statements that have been made, the legal challenges that are to come. I believe that what will be challenged will not be the retroactivity of it, because several provinces have not sustained any challenges with retroactivity because they retained the veto. Some provinces have approved full disclosure on a go-forward basis. That is not being challenged. But this clearly will be challenged.

I want to be able to put on the record that these privacy rights are of paramount concern. I would not willingly undo one piece of legislation, which Canadians waited a long time to receive, for the expediency of another purpose that would adversely affect our citizens.

So I submit this on behalf of our caucus with the full support of the concerns raised by our privacy commissioner, Ann Cavoukian, and a substantive number of birth parents and adoptees who have expressed similar concerns. I will respond to any other comments.

Ms. Churley: I want to thank Mr. Jackson, the five times I've brought my bill forward, for supporting it without a disclosure veto. I appreciated that support at the time, because I believed that he understood then. He was one of the many Conservatives of the day, actually, who supported my bill. It was quite interesting that the majority of legislators—all of my party; most of the Liberals, except a couple, I believe; and at least two thirds of the Conservatives—reflected the poll that was done across Canada and across Ontario to see how many people supported adoption disclosure, and a huge majority did. I wanted to thank him for supporting it at that time. They're singing a different tune now that it's a government bill.

Let me say a couple of things about the amendment and Mr. Jackson's comments. First of all, we're very far behind. Other jurisdictions, like Western Australia, are ahead of us and they're now taking out the disclosure veto. Let's learn from those who are ahead of us, who put it in and are now removing it. That's number one.

Number two, there are various legal opinions. I don't want to say anything negative about lawyers, but we all know that if you need legal opinions, it's fairly easy to get opinions on both sides. There are lots of opinions on the other side of the legal equation here as well about withholding personal information. When we talk about personal information and privacy rights, remember that we are talking about just the birth parents and the adult adoptee. We're not talking about opening up records to the whole world. If you were my birth father or whatever, you and I could apply for each other's information. Nobody else can. They'd be turned down. Sometimes misinformation about it makes it sound like anybody can apply and get all this personal information. It's not so.

If you bring in legislation that has a disclosure veto, it means that we continue to discriminate against a group of people, albeit a small group, who still would not be able to have access to information that everybody else—adoptees, plus those of us who were raised by our birth parents—would be able to have access to. It's not fair. While we're correcting this unfair, discriminatory legislation, let's not build in more discrimination. This is our opportunity in one sweep to get rid of that discrimination.

I would also say, to Mr. Jackson's comments about those people who wrote in, saying that they don't want retroactivity and that they're concerned about disclosure, this: If a massive education program were launched and we all spoke the truth and gave the facts here, I believe that those people who are now afraid about what might happen to them if their information is disclosed—that they're an adult adoptee, or vice versa, that they are more likely to be identified and contacted now, because of all of the facts I outlined earlier about the accessibility to information to find each other—would welcome this legislation, even without a disclosure veto, because of the contact veto which is in place.

Even if Mr. Jackson were right, and on a couple of occasions that was violated, the fact is that there will be a legal remedy. There isn't now. So I think it's really important for us all, including Mr. Jackson and the Conservative members, to make it clear to those people, for their own peace of mind—because there's misinformation out there—that in fact this legislation will give them more protection once it's passed than they have right now.

I want to end by reminding people again that privacy commissioners across this land, including here in Ontario, admit freely that adoption legislation does not come under their purview.

You know, of course, why adoption laws were exempted. Think about it: It is because, if they weren't exempted, they would be obliged to give personal information to the adoptees. It's as simple as that. Right now what's happening is that personal information is being kept from adults. The kind of information that we take for granted about our birth heritage is locked away in a file and they're not allowed to have it. Imagine if that came under the privacy commissioner. She would have no choice but to release that information to that adult. That is why they have been exempted.

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So indeed, the opinions have been given. They are not legal opinions; they are opinions based on being asked in terms of how they oversee privacy and right to information, but in fact there are many legal opinions. I

will be providing information a little later about the recent case of Donna Marchand, who many of you know recently won a court case. She had been trying to get access to her birth information for many years. She won the case and those records were opened up to her. So there's already a precedent out there in terms of a particular case, which I believe would indicate that if there is a court case—and if there is, there's going to be, and that's fine—the reality is that with the case that was recently decided upon, the precedent now, I would submit, would mean more to the legal side of having to provide that information to adult adoptees.

Mr. Arnott: I too wish to speak in support of this important motion. I think this is probably the key amendment that's being put forward by our party. I'm a bit disappointed to hear some of the government members this morning accusing our party of being obstructionist. It's certainly not my intent to come here today and be obstructionist in any way, shape or form. It's a bit rich to hear this from some of the government members because I distinctly recall, when I had the opportunity to chair the Legislative Assembly committee in the mid-1990s, one member for Windsor West, who is now the Minister of Community and Social Services, speaking at some length, to say the least, to the issue of referendums that the government was considering and seeking a report back from the committee. Again, there was absolutely no time allocation motion on the committee's business, and the member for Windsor West came to every meeting. Quite often she was the only member of the Liberal caucus who was present at the meeting, and she had the capability to speak to the issue for two and a half hours a day, and she did so in many, many cases. As Chair, I certainly allowed it. I didn't criticize her. I didn't suggest that she was trying to filibuster. Members can check Hansard if they wonder about this, but that's a fact. It went on for weeks and weeks and finally, at some point, came to a conclusion. But to suggest that MPPs who wish to debate these kinds of issues before a standing committee and have these issues thoroughly discussed, debated and hopefully resolved in the public interest are simply trying to filibuster in every case is simply not the case and is not accurate.

I would return to the document that all members have that was sent to us by the Information and Privacy Commissioner on September 7. Of course, this is a supplemental submission to the presentation she made to this committee earlier this year. The privacy commissioner indicates that she supports greater openness in the sharing of adoption-related information, but she again suggests her concern "about the proposed retroactive application of the legislation to records that were created during an era when secrecy was the norm, without the existence of a mechanism for individuals to prevent the disclosure of their personal information (i.e., disclosure veto)."

She offers us the expert opinion—an independent opinion—of Dr. Anne-Marie Ambert, who is a sociology professor at York University, who emphasizes that she's a researcher, not an activist. In Dr. Ambert's presentation, she says:

"I would go one step further, as my expert opinion leads me to be very concerned about opening records retroactively. Indeed, many birth mothers will have shattered lives as a result of being 'outed,' while many adoptees and birth mothers may be approached by a disturbed birth parent or child, not to omit cases of incest, rape, sexual coercion, etc. Contrary to media-promoted pop psychology, many adoptees are not interested in being 'reunited,' and many birth mothers who have moved on and have children 'of their own' do not want to revisit the past. Yet, these persons are completely normal."

Again, I'm rather surprised that the government seems to be dismissing these concerns that have been brought forward by the privacy commissioner. We're not really hearing any more rebuttal from the government or an effort to rebut these serious concerns that are being put forward by the Information and Privacy Commissioner, supported by a number of legal experts. I would turn again to a document that each member of the committee should have that was sent to us in late August by Richard Owens, the executive director of the Centre for Innovation Law and Policy. Again, I won't read all of his comments, but I think a salient point he makes is:

"As stated above, this bill starkly offends the right to privacy. That right in Canada is articulated, and protected, by evolving common law, legislation, international instrument, the code civil, and the Canadian Charter of Rights and Freedoms. A bill that so materially abrogates a right to privacy, long settled between citizen and state, is probably not immune to legal challenge. After all, it newly empowers government itself to disclose highly sensitive, hitherto confidential records against the will of a citizen. Moreover, because the immediate effects of the bill will be so detrimental to important privacy interests, one might expect a court to forestall its operation by injunction pending resolution of its validity."

I certainly have not heard from the government members so far this meeting any effort to rebut that important point. I would certainly challenge them, and if they have information to put before this committee which effectively refutes or rebuts this important point, I'd be interested in hearing it.

I would say again, this amendment that has been moved by our critic, Mr. Jackson, would address many of the key concerns that have been brought forward by the privacy commissioner and others, and I would encourage government members, notwithstanding the marching orders that may have been given to them, that if they don't support this amendment, they will be doing a disservice to thousands of people in the province of Ontario, and affecting their lives in a way that perhaps we can't even comprehend.

The Chair: Thank you, Mr. Arnott, and I note that it is 12:00. It's time to break for an hour. I would invite all of you to be back at 1:00. I thank you for your contribution at this time.

Ms. Churley, before we break?

Ms. Churley: Yes, just a quick request. I'm attending a press conference at 1:00 briefly, the one Mr. Jackson was referring to. I would ask that any of my amendments be stood down until I return from that at about 1:30. Could I get permission?

The Chair: Do I have consent to do that, if that will be the case? OK. I do have consent and I will be able to do that.

Ms. Churley: Thank you.

The Chair: Have a good break. Thank you.

The committee recessed from 1200 to 1305.

The Chair: Back to you, Mr. Jackson. We're dealing with page 13.

Mr. Jackson: Mr. Chairman, without getting into the optics of the absence of several of our members with a press conference going on at this moment, I would respectfully request a 20-minute recess until we can assemble not only the individuals who are required to be here for the Legislative Assembly, but also the adoption community, which is there and not here. I heard quite passionate speeches about the importance of getting everything done today in front of all these people, and they're at a press conference. I find it quite unusual. I won't characterize it in any other way than that, but I respectfully request a recess until we can assemble the principal players in this legislative review, Mr. Chairman.

The Chair: I thank you, and I would—Ms. Wynne, any comments on this?

Ms. Kathleen O. Wynne (Don Valley West): I think that Ms. Churley asked that her amendments be stood down until she came back. We all agreed to that, and I think she was perfectly fine with us going ahead, so I wouldn't see why there would be any reason to stop now. I think we should just go ahead. We dealt with that arrangement before the lunch break.

The Chair: I understand that I need unanimous consent to give 20 minutes or whatever amount of time, therefore I ask if there is unanimous support for a 20-minute break.

I didn't hear a no, so you have 20 minutes.

Interjection.

The Chair: Nobody objected, so you have 20 minutes.

Ms. Wynne: I said no, absolutely. I don't agree.

The Chair: Is there an objection?

Ms. Wynne: Yes, there is an objection.

The Chair: Mr. Jackson, back to you.

Mr. Jackson: I thought you'd allow us to debate the points. You have recognized one member to comment on my request for an adjournment.

The Chair: I was trying to see if there would be support. Now that I hear that there is no support, if you want to argue, I don't have much of a choice.

Mr. Jackson: I respect Ms. Churley's right to call a press conference at exactly the time this committee is supposed to be doing its work. It's her right to do it. My concern is that I'm not there to hear what's being said, not only by one of the three political parties, but I'm also not able to hear what the adoption community is saying, which they've been called forward for. I suspect that Mr. Parsons—I can't account for him but I suspect that he, equally as concerned, as someone responsible within his caucus for the forward movement of this legislation, is there. I'm just not given the same rights and privileges because Ms. Churley was clever enough to say, "Don't worry about me. I'll be gone for a while." But she took the adoption community with her.

Mr. Jeff Leal (Peterborough): I think Mr. Parsons is just standing outside the door.

The Chair: I did notice Mr. Parsons outside the door when I came in. He's still there. I guess we have two choices. I hear that there is no unanimous support. On the other hand, Mr. Jackson will continue discussing the issue as long as he wants, and I can't prevent that from happening, so I'm not too sure that we're getting anywhere in that sense. I'll ask if there is any more debate on the issue, and if there is none, I will ask for a vote. Mr. Arnott?

Mr. Arnott: Mr. Chairman, I'm somewhat concerned because I thought that any member could ask for a 20-minute recess before a vote and that it would normally be routinely granted, that it wouldn't go to unanimous consent of the committee.

The Chair: I'd be happy to ask staff to comment on your question, if I may.

The Clerk Pro Tem (Ms. Lisa Freedman): The rule is that members are automatically entitled to up to 20 minutes when the question is put. We're in the middle of debate, but if debate were to finish, then it's an automatic up to 20 minutes.

The Chair: It seems that if there is a debate, the motion on the floor doesn't apply. That's why I have to have unanimous support. Any more comments on the request?

Mr. Jackson: If the debate is not going to be impeded, then I wish to put on the record a couple of additional issues around the concerns being raised about a veto. I was on the phone to one of my constituents over the lunch hour who found out about this process through the media. He and his wife just adopted a five-and-a-half-month-old from the children's aid society. He wanted me to put on the record his concerns about the disclosure veto and the access for the individuals, where the birth parents have an extensive criminal record. I'm just passing on his concern. His concern is that if he is still living at this home in Burlington, these individuals will present themselves on his doorstep when his wife is home by herself. He's genuinely concerned about it. That whole issue is one which is causing him considerable concern on behalf not only of his son, whom he's recently adopted, but also for the safety of his wife. It would appear that there seems to be no system in place to deal with this, other than now that you have the information.

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I noticed when I was reading some of the materials in other jurisdictions that there are notice periods, advance

warning periods, and obligations to have a third party inform others. It seems to be a general lack of interest in looking at that, and maybe I can ask staff if that was ever considered or why it was rejected.

The Chair: Would staff please answer?

Ms. Lynn MacDonald: I can't speak specifically to that, but I can say that there was a thorough examination of the legislation in other jurisdictions in Canada and elsewhere. As to decisions on why to accept or reject certain elements of other regimes' rules, you'll appreciate that I would not be able to comment on it.

Mr. Jackson: But you do acknowledge in your research that there are jurisdictions who have put their minds around this issue of the security of the person who has no choice in the matter of disclosure of their information. You'd really only be looking at places like England, recently, and one jurisdiction in the country of Australia, that have an unfettered right to access information.

Ms. MacDonald: Staff have looked at legislation from jurisdictions in North America, Europe, the UK, Israel—I think that's as far afield as we went—and Australia.

Mr. Jackson: Fair enough, but I'm asking you which jurisdictions have the combination of retroactivity and no disclosure veto whatsoever. The minister has cited Australia, and Ms. Churley has cited recent developments in England. I'm just asking you to confirm that this legislation is advancing on an example that exists in one state within the country of Australia.

Ms. Krakower: Three jurisdictions in the United States have those types of systems in place: Alabama, Oregon and Tennessee.

Mr. Jackson: And other jurisdictions that have the combination of retroactivity and an unfettered right; in other words, no veto provision? Are those the only three you can give us? Perhaps the other individual can identify himself and be helpful.

The Chair: Anyone from staff who has an answer.

Ms. Krakower: New Hampshire is another state, and of course you mentioned England and New South Wales. That may not include every single last jurisdiction, but those are the ones we've researched.

Mr. Jackson: Your assistant deputy gave us an extensive list, and these are the four or five you've been able to come up with. So my question again is, of those jurisdictions, which ones have a requirement for the state to notify the applicant that there has been a request for information and it has been given?

Ms. Krakower: Just to clarify: for the state to notify the individual that there's been a request?

Mr. Jackson: Yes. It's my understanding that some legislation that deals with no veto to information requires a period of time to notify the families or the individual that their disclosure information has in fact been—well, it's two things that you let them know: that there's been a request, and that the request has been conceded to and that that individual is in receipt of it as of a certain date; and there is a period. There are three components to this: There is the notice, and then there is a waiting period or whatever you want to call it.

Ms. Krakower: New South Wales isn't the only jurisdiction, that I'm aware of.

Mr. Jackson: Can anyone on the government side explain to us why the protections that existed in New South Wales were rejected by the minister?

The Chair: Mr. Parsons, would you like to answer? You don't have to.

Mr. Parsons: I'm not paying as close attention to everything you're saying as perhaps I should, Mr. Jackson. I apologize for that.

Mr. Jackson: All right. I had asked staff, in those jurisdictions that have retroactive legislation and full disclosure with a non-disclosure veto—that there is no veto of disclosure—which has a provision that requires notice to the family or the person who will be affected that (a) there has been a request for information and (b) the applicant has received the information?

In the body that I've that read through, a couple do it for several reasons, one being to give the families time to notify other family members, "This is about to be disclosed and I think you need to know about it." It speaks to the issue of the therapeutic intervention that may or may not be required but should be empowered in the hands of the individual who is affected. It has several purposes.

Staff have indicated that, to their knowledge, the only jurisdiction that has it is New South Wales. I'm going to ask them exactly what New South Wales does, but I got ahead of myself and I asked if there's a reason why the minister didn't include this in her legislation. One could cast it as a courtesy. We're hearing from others who are casting it as an issue of protection. We've heard a third group of individuals who are saying, "I need time to prepare my husband to let him know that I was raped when I was 14, and I've never told anybody." I don't want to sit here for an hour and read all these letters, but I've got lots of them. Some of them have said, "Look, if this thing is going to happen, can someone not listen to us even to the point that you'll understand what it's like for a woman to be put in that position? I would like a little bit of time to go and explain that to—" and for some people, that's a lot of people. They've got their children, their husband and their husband's whole family.

Some jurisdictions have approached this from a sensitivity point of view and determined that something should occur here. We're silent in this area. Perhaps staff could enlighten us as to what exactly is done in New South Wales in this regard, since it has surfaced during the recommendations and you're confident—I'm looking to the assistant deputy minister—that Alabama, Oregon, Tennessee and New Hampshire have not gone in that direction at all.

Ms. MacDonald: With your permission, I'd like to introduce our senior analyst, Hari Viswanathan. Hari has been responsible for doing interjurisdictional research. So rather than working through us, I'd like Hari to answer your question, if that's agreeable.

Mr. Hari Viswanathan: In New South Wales, they have what's called an advance notice registry. The advance notice register ensures that persons who are anxious at all about being identified have two months prior to any identifying information being released so they can prepare themselves and their families for any sort of potential concern about the information being released. With the register, they have to actively put their name on it in order to notify the government that they want this delay in disclosure to occur.

Mr. Jackson: What is the length of time?

Mr. Viswanathan: Two months.

Mr. Jackson: In any of your research, was there any evaluation of this provision with respect to—I would imagine that it would lessen some of the anxiety around matching.

Mr. Viswanathan: This provision actually came after a law reform commission report, I believe in 1992. The legislation was introduced in 1990; it opened up records. This was one of the factors that was recommended to protect the privacy of individuals or to respect the privacy rights of individuals. I'm not aware of any other evaluation of the mechanism, no.

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Mr. Jackson: Then how does this advance registry work? I can see that the rationale from the law commission was the principle in law that you need to give proper notice to prepare someone. We do it if you're a criminal: You're given proper notice before you're hauled off, and so on. I can see that principle.

But when you reference the issue of privacy, their privacy rights have evaporated. This is simply a protectionist mechanism to say, "Look. If you need to get your house in order, here's two months in which to do it." We have an informal system for rape victims, for example; I know, because I wrote the section. When you leave prison, there has to be notification to the victim that their rapist has been released. Then she is provided with an impact statement to determine if the courts have an opinion about whether this individual should leave, and so on and so forth. That principle in law I'm quite aware of, and that's why I wanted to know. But it's more for the case of a privacy issue, is what you're saying, in the research.

Mr. Viswanathan: I have no comment on the efficacy of the actual system; however, my understanding is that from the report that was released, there were certain mechanisms that were looked at in order to assess whether there can be some protections in place for the privacy of individuals.

Mr. Jackson: Based on the sampling of those that you examined, Alabama, Oregon, Tennessee, New Hampshire, England and New South Wales do not have this—oh, New South Wales has it. But England didn't put that in, about giving them notice?

Mr. Viswanathan: Not to my knowledge, no.

Mr. Jackson: All right. We're going to table an amendment that mirrors the New South Wales Legislation. I need to ask: In New South Wales, they continue with a department that maintains carriage of all the records for adoptions in New South Wales, is that not correct? That department would manage notifying individuals, or receiving requests from persons who want to be given two months' notice before contact information is released. Is it a government agency that manages that, or is it an arms' length agency?

Mr. Viswanathan: My understanding is that it's a government agency that hands out what's called a passport, which provides the adoptee of the birth parent with accessibility to the particular agency that holds their adoption-related information. So the government is kind of the gateway, as it were, to getting that information.

Mr. Jackson: My question then would be not necessarily to you, as the researcher, but would the office that handles the records—I should memorize what we're calling that place—have the capacity to process the custodian of the adoption information? You call it the "custodian." Would they have the capacity to be a means through which people can register a two-month delay of the transfer of the information?

Ms. Krakower: It's my understanding that one of the amendments that you put forward was with respect to a delay when an individual is not successful in obtaining an order to prohibit disclosure.

Mr. Jackson: Right. Has that section been passed? I should turn to legislative counsel.

Ms. Krakower: I believe it carried.

Mr. Albert Nigro: Mr. Jackson, as you know, I'm just filling in, and I'm not sure what section in the bill you're referring to.

Mr. Jackson: This is the section—and staff could be helpful in directing us—that deals with the appellant mechanism for victims of sexual abuse.

Ms. MacDonald: The motion obliges the registrar general to delay the disclosure of identifying information to a birth parent when the Child and Family Services Review Board does not issue an order.

Ms. Krakower: Government motions 21j.2 and 21j.3 have both carried, and those are similar motions. Those are both with respect to the registrar general allowing a period of delay for a time period that the board would consider appropriate before disclosing information.

Mr. Jackson: And when the board rules against the applicant, would they be given a two-month grace period before notice?

Ms. Krakower: It could be two months, it could be a month or it could be three months, depending on what the board considers appropriate in that particular situation.

Mr. Jackson: Mr. Chairman, I'm going to need assistance from legislative counsel to draft a motion which specifically allows someone to file a motion or simply apply to have a two-month delay before the records are released to the applicant. Upon an application for disclosure, the subject has a right to a two-month or whatever notice period before the file is transferred or released, I guess would be the proper—if I could get some assistance. It doesn't have to be done in the next 10 minutes. I'm not going to hold up the procedure.

It was a concern I raised at the time when we were doing the appellant mechanism. There are a couple of cases of families who say that the horror of presenting before an appellant mechanism far outweighs any other kind of horror. Anyone who's had any experience with some of the other third-party interventions, such as women who have had to explain in detail to a panel of doctors the horror of their rape as a condition of being able to get an abortion in this province, as late as 20 years ago, would know how serious an issue this is. Women reporting a rape who go into a hospital are required by law to disclose, whereas if they go to a rape crisis centre they're not required to, under the law. That's why some women choose to report their rape to a rape crisis centre instead of to a hospital or to the police. There are several other examples of that, but it's also the principle under the Victims' Bill of Rights—which these women who bring their children to term still are—that they are not required, through any tribunal in Ontario, to retell or recount their stories. Yet we're now creating a panel that allows them, three strange men or women, to determine whether or not a person's circumstances that they endured many years ago are the subject of a review.

I would ask counsel to help us prepare that so that it reflects more the spirit and understanding of the law commission report in the highly touted New South Wales model that the minister is so proud of, and you certainly would want to embrace that component. I suspect that they would have had some cases that did not work out very well that even could have resulted in—

The Chair: Can I then ask for a five-minute break so that staff can do that? I think that should be enough time to do that.

Mr. Parsons: Just a question, Chair: Could we have some sense of how many more amendments we expect to have brought forward during this?

The Chair: Mr. Jackson or Mr. Arnott, do you have any idea at this point?

Mr. Jackson: I can only say that there will be more than the government is presenting today; that's for sure.

The Chair: That's an answer. Thank you. Five minutes, please.

The committee recessed from 1330 to 1341.

The Chair: I believe we can resume our meeting. Mr. Jackson's amendment will be coming later on. We will continue on the amendment which was in front of us. Mr. Jackson, back to you, unless you don't have any more comments at this point.

Mr. Jackson: We will have an opportunity to fully debate this issue of why, in the absence of a disclosure veto, we do not accommodate families out of simple courtesy. I'm sure the law commission in New South Wales would probably suggest to you, in the best interests and the safety of the applicant, that some accommodation be made here.

I am increasingly worried that much of this legislation is being developed on the basis that we are removing a substantive portion of the support mechanisms within this ministry, and that is something that's been echoed by several groups. Those who strongly support the legislation are concerned about the support services that would be in place to sustain its best operation.

I indicated that we benefited from several additional legal arguments with respect to the issue of the motion on the floor about a disclosure veto. In fact, even the law society and the health/law section of the Ontario Bar Association have quoted from the Freedom of Information and Protection of Privacy Act, RSO 1990, from the Personal Information Protection and Electronic Documents Act of 2000, and from a Supreme Court of Canada charter ruling on Hunter versus Southam. The list goes on and on of concerns that they keep stating about the importance of keeping personal information confidential and not subjecting people to essentially plea-bargain with a quasi-judicial panel with no accountability to determine whether or not a person has enough emotional stability to have their information shared with other persons.

So for that reason, I am quite concerned about the absence of any independence to the veto option. Clearly, this disclosure veto is all-encompassing. It's what occurs in four or five other provinces currently. Well, actually, virtually all of them have a disclosure veto, if you include those who have had sunset provisions, so that new adoptions have to conform to full disclosure. That means there are people in that province who still have access to a grandfathering provision that allows them to have a veto. So for us to be the second jurisdiction to engage in this substantive activity—well, I shouldn't say that. Alabama, Oregon, Tennessee and New Hampshire currently have the retroactivity and no veto.

I've referenced the law, the Ontario Bar Association, and for some reason, I have a couple of extra copies. I suspect that somebody may have dropped that on my desk by accident, because I seem to have everybody's copy here. I don't know why I would have seven or eight copies. I'll give them back to our outstanding clerk. I only needed to read one.

The Chair: I thank you for being so kind.

Mr. Jackson: The failure of the no-contact provision is why we have tabled the section that deals with adoption, the information disclosure veto. They reference in their report:

"It is not clear how parties will be apprised of their right to register a no-contact notice, and how the timing of it will work. Under subsections 48(3), (6) and (7), notices registered by a birth parent or adopted person are ineffective if the registrar general has already given out the information." This is a Catch-22.

"Unless there is a lengthy moratorium period that would allow birth parents and adopted persons to file no-contact notices in advance of the registrar general making disclosure, many persons may be contacted who did not wish to be."

That is a concern being expressed in the manner in which the current legislation has been worded with respect to the no-contact provision and the appeal.

"In conclusion, we are very concerned that Bill 183 mandates openness in past adoptions in a way that compromises established privacy expectations. It may

cause unnecessary stress and emotional trauma to many and, if only in isolated circumstances, results in significant harm. We urge the committee to carefully review Bill 183 to see if its laudable objectives can be accomplished without unduly compromising individual privacy."

The presence of a disclosure veto, we think, is fundamental to upholding the principles contained in our privacy act and in our charter. There have been very few times that I have participated in legislation that we know in advance will be challenged and, in all likelihood, fail. I urge all members to at least consider this.

Mr. Arnott: I'd just like to offer some additional information that hopefully would persuade members to consider supporting this amendment in favour of a disclosure veto. It comes from today's news clippings, an article by Christina Blizzard. She offers a scenario that I think is quite possibly out there in any of our communities today. She writes:

"Imagine you're a 70-year-old woman. Fifty years ago, to borrow an expression my mother might have used, you had a child out of wedlock. Back then, it was something nice girls didn't do. Or if they did, they didn't advertise it.

"You went off somewhere, had a baby, put the child up for adoption. While you never forgot that child, you got on with your life.

"At a time when birth control was (a) unreliable and (b) frowned upon by many, an adolescent indiscretion turned your life upside down. Now, having done the right thing and having abided by other people's rules, you're expected to bare your soul because another group has come along to change the rules—again. When do birth mothers, those forgotten heroes in all of this, get to play by their rules?

1350

"The most significant amendment to the legislation allows women who don't want their history revealed to go to the Child and Family Services Review Board"—this is the government's amendment, of course—"for an order prohibiting disclosure of that information to prevent sexual, physical or emotional harm. So, you're 70 years old and you're an honest person. How do you answer that question?

"Is anyone going to rape or torture you for your indiscretion? Unlikely. Do you have a history of psychiatric problems? Well, no, you just have this odd notion that a deal struck 50 years ago which you have honoured should be respected by the state—not to mention the child who benefited from your original decision.

"Privacy commissioner Ann Cavoukian has been raising the alarm for several months and she still isn't satisfied with the amendments. Her office still opposes the legislation.

"'You would have to show you would experience harm, so there is a harm's test built in and I think that the commissioner would say that miscasts the question," assistant privacy commissioner Brian Beamish said yesterday.

"'Individuals shouldn't have to show that they would suffer harm. If they relied on undertakings of confidentiality years ago, they should be able to rely on those undertakings of confidentiality now.'"

This again underlines why a disclosure veto is needed. I would urge members of the committee to seriously consider what the opposition is saying.

The Chair: Ms. Churley, you're next.

Ms. Churley: I want to read something into the record briefly that I referred to earlier. It is not just for the members of this committee and Christina Blizzard, who wrote this article, but for other adoptees or birth parents who do have concerns about their lives being disrupted. It is important to repeat this over and over again. This came recently, actually, from the privacy commissioner. Here's what it says. It's in great big black letters:

"Alert for Birth Parents

"Adoption Identification Alert

"Until recently we believed, on the basis of information that we then had, that outside of the adoption disclosure registry scheme, it was extremely difficult for an individual to obtain identifying information from the registrar of adoption information other than for health, safety and welfare reasons. We are now aware that potentially identifying information from adoption orders is made available to adult adoptees on a routine basis.

"An adoption order contains the information set out in a designated form, and includes such information as the child's date of birth, place of birth (municipality, province and country), the name of the judge and address of the court issuing the adoption order, and often the full name of the child before adoption. The child's surname before adoption will likely be (although not always) the same as that of the birth mother or father. This, together with the other information, can be used as a springboard for identifying the birth parent."

The privacy commissioner goes on to explain more. It's basically an alert for birth parents.

I read this into the record to reiterate once again to those out there who may be watching this, to people here on the committee, to the privacy commissioner herself, to anybody who shares those concerns after reading an article like Ms. Blizzard's, what the information straight from the privacy commissioner is saying to birth parents. This is what we've been trying to say all along, and it has been buried. Right now the chances are, if somebody of that age 50 years ago had a child out of wedlock—and many did, if they weren't forced into marriage at the time. I would submit that that women who had the child 50 years ago, so-called "illegitimate" at the time—isn't that a terrible word? If that "illegitimate" child wanted to find her by now, they would have done so, because this information is already out there, by the privacy commissioner's own admission, plus, as I stated earlier, all of the non-identifying information that's provided, the Internet searches and all of that.

This is such an important point. For those people who don't want contact, for those people who fear that their privacy could be invaded, it is important to understand that this legislation with the contact veto, which doesn't exist now—with this information available—will actually provide a protection that doesn't exist today. It is really important to keep reiterating that, because I know there are people out there—I have heard from them as well, as I'm sure we all have; they're there—who are very concerned about their privacy being invaded. There are actually some adoptees, not just birth mothers, who feel they have happy lives and at this stage in their lives—who knows? It could change—feel threatened and don't want the contact. That is why it's so important to tell the truth here and to get the information out.

I'm going on at length about this because it is so important. I know that this message is getting lost, given articles like that and some others and editorials in newspapers and the stance of Conservative members. I'm very pleased that the privacy commissioner has now come forward with this information because it actually reinforces the position that I've taken all along, and that of the adoption community, many of whom are here today, representing all aspects. We just did a press conference and I welcomed everybody into the committee hearings this afternoon. We all understand that there are some people who are very concerned that this bill is going to take away a certain amount of privacy that they feel, but it's a false sense of security that exists right now. I want to thank the privacy commissioner, after we released this information, for putting it on the record. It's there; it exists.

I would reiterate that all members should take the time to look at all of the evidence, not just selective evidence that supports their position, and that goes for all of us. As Dr. Grand pointed out in the press conference this morning, there are some recent studies rebutting the study that Mr. Jackson related this morning. A hard, cold scientist—not the so-called activists like us, but a hard, cold scientist who actually has a deep-seated background in this material, far more so than the studies cited this morning. But if you look at those studies, if everybody reads the information that's out there today—and I would say that to the reporters as well—in terms of somebody showing up at your door, although people don't do it, it is much more likely today than it will be once this bill is passed.

The Chair: Further debate?

Mr. Parsons: I'm not sure I have anything to add to the debate but I feel an obligation to give Mr. Jackson's voice a break once in a while, so you're OK for the next little while.

This is a made-in-Ontario bill. It's not a made-in-New-South-Wales or a made-in-Alberta bill; it's a made-in-Ontario bill. I'm pleased with the extensive consultation that this government undertook on it. The people came forward. It's great to read things into the record and they are very useful, but we need to remember that already in the record is the testimony given by many individuals who sat at that table and spoke to us.

One of the issues is certainly a need for someone to prepare. It's our government's commitment that there will be an extensive advertising campaign because this does represent a radical change in the information available to individuals in this province.

I don't think I have ever met any adoptee who didn't know they were adopted, whether having been told—I represent a rural area, and our children are adopted. Quite frankly, we know the names of their birth parents and we've never sought them out. It's just the reality of a small town that we became aware. We had an individual come up and comment on one of our children and say, "They look so much like—" and they were bang on. We didn't say, "You're bang on," but they were. That's part of a small town, and I love it, because the birth parent is not a threat to us or our children.

1400

Will there ever be contact? That's up to our children. That's something that they will drive; not us. If the birth parents wish to have contact, that's up to our children. I think it would be great. There's almost a sense that it's a threat, that a birth child showing up at a home will destroy a life, and maybe it will, but experience hasn't shown that.

I've changed my vote over the last couple of years, folks. I've changed my vote because I recognized that what people were saying to me was genuine and was right. I've never walked in their shoes, and they have, and they brought a perspective to me that I said, "I accept. I can see their viewpoint." I was the poster child for opposition to this bill at one stage.

Ms. Churley: I remember that.

Mr. Parsons: Yes, I voted differently on your bill than I am on this bill. I'm voting this way on this bill not because it's a government bill and I'm on the government side; I'm voting this way because I think it's a good bill.

When we're reading into the record, let us go back to what people said. Were there promises made to birth mothers that their name would never be given out? I believe there were. Whether it was done with authority, I don't know; I think there's some question on that. Were there promises made to birth mothers that, when their child reaches a certain age, they would be reunited? I believe that there were, which emphasizes to me how completely unstructured the adoption legislation has been historically in this province. I've used the phrase that it's the Wild West, and I continue to believe that.

The inference is that when a child becomes adopted, their mind is like a slate and it's wiped clean, and they don't know they're adopted and won't remember it; that when the birth mother saw the child for the last time, their memory was wiped blank and they went on with their lives and never thought about it. Because of some personal experiences, I have the sense that they probably think about it every day, because it's part of their fabric; it's part of the adopted individual's fabric.

We're looking at some amendments as if we need to legislate human emotions and legislate human behaviour, and we can't. We can't legislate passion, we can't

legislate love and we can't legislate desire, but what we can do is legislate process. This bill doesn't change any emotion or anything that's going on in this province or in this world other than that it establishes a process, so that with extensive ads—and I believe this bill has attracted significant media attention on its own, and that's great, because it gives everyone involved in any way in this issue awareness of what's happening. On top of that, there will be an advertising campaign.

When we talk about giving someone some time to prepare themselves, they've had all their life to prepare for it, and now this bill will warn them that there's a possibility that the information could be given out. At the same time, with individuals the official opposition is concerned about, it provides assurance that that doorbell won't ring and the person on the other side won't appear unless they want the person to appear. That's not there now. There's nothing there now to protect them. As you hear the concern, "I'm afraid that I'll answer the doorbell and my child will be there," you'd better have that thought each day, right now. Each of us in this room can think of significant numbers of stories of people who say, "I found my child," or "I found my parent." It's an illusion if we think that this will start that exercise taking place. This only legislates the process.

Everything we're seeing in the way of amendments is to further stall these parties getting together.

I had a gentleman sit down with me. He's in his early sixties and has been on a mission for about six years to find his mother. He found her in the graveyard, where she had been for less than a year. Had this bill been in place, he would have found her and had some contact.

Maybe it's a factor of age on my part, but my roots become more important to me as I get older. I don't think I'm any different than anyone else. I know why I look the way I do. My grandfather was ugly, my father was ugly, and I inherited that. That's the reality. If I'm ever in the media, I have a radio face; I know that. There are other characteristics and other things I have that I find kind of neat to see when I see a photograph of a great-uncle of mine, complete with the bars and the number underneath. It's important to me. It gives me some sense as a human, that I am part of a greater plan and a greater enhanced family. Amazingly, some of our adopted children look like us. I'm not a scientist; I don't understand that. But for others, I know it will mean a great deal to them to be able to share in the accomplishments of their grandmother and their grandfather and their great-grandparents, and to know family behaviours. I know everybody is different, but it's amazing how much of the behaviours we have that are inherited. It would kind of neat for them to find out why they do certain things that they do. We know in the case of one of our children that he does something that we didn't understand, but we eventually found out that that was a family characteristic. That was nice.

Please, don't delay it. Don't put in more roadblocks. This bill was put together by a panel of experts consisting of the people of Ontario who came out to the hearings and told us what they needed and what they wanted. Not everybody agrees on everything. That's the beauty of us as humans, that there is that diversity. But the vast majority carried the same message, and I believe this bill reflects that message. I'm very saddened for people whose expectations had been up for some months now, for some years now. I give credit to Ms. Churley in her bill that drew forward people's hopes and expectations some years ago. For them, it isn't a matter of waiting from June to today, folks; it's a matter of waiting since—what year, Marilyn?

Ms. Churley: Well, I don't know, but it started well before my bill, as well.

Mr. Parsons: So, 10 years maybe.

Ms. Churley: Ten, 20 years.

Mr. Parsons: Yes. It's been enough. The province, the people in Ontario, I think, have given a fairly clear message on what the vast majority believe. There are safeguards here to prevent contacts. This bill has got to be an improvement. I'm not adopted, but I hope I have just a little bit of a glimpse and a sense of how important it is to these individuals. I just hope that we can make some progress on this and get on to the next step. It's going to happen not because we have the most members, not because we're the government; it's going to happen because the people of Ontario—this is a wave that's happening across the world. Let's be a leader, instead of being dragged kicking and screaming into the current century. Thank you, Chair.

The Chair: Thank you, Mr. Parsons. Is there any further debate? Mr. Arnott is next.

Mr. Arnott: I listened to the presentation by the parliamentary assistant and I appreciated what he said. I just want to ask him a question. Why is the government dismissing the concerns that have been publicly expressed by the Information and Privacy Commissioner?

Mr. Parsons: I think it's unfair to characterize it as dismissing. They have not been dismissed. As you know, the difficulty of this issue—well, I guess almost any issue—is balancing rights. Your party has made an eloquent case for the right of an individual to not have their information disclosed; a very eloquent case. I understand that. I made that argument at one time. But at the same time, if we're looking at rights, do we as individuals and Ontario citizens not have the right to information about ourselves?

As you argue for one group to not have to give out information, you are making an equally strong argument that another group is not entitled to have their information. That's the difficulty.

1410

Very clearly, there are thousands of individuals in Ontario who at the present time do not have the right to know who they are, where they're from, their medical history. The legislation as it stands now bans people from knowing who they are. Is there a compromise that will satisfy both? There isn't.

If we go back in history, at one time, there weren't adoptions. The child simply went and lived with another

family. Then the school of philosophy became, "Don't tell the child they're adopted; don't let anyone know," as if it were wrong. That was the thinking 100 years ago: as if it were wrong. Thank goodness we've moved beyond that.

What we are gradually doing—and this bill is a culmination, in my mind—is granting adoptees full citizenship. For the first time, they will have the same rights that non-adoptees have, because there's a gap right now.

You and I, assuming you're not adopted, have the luxury of getting medical information simply by a phone call or a question or asking another relative. You and I have the luxury of having siblings. There are adoptees who don't even know that they have siblings. So we have right now a group that has been deprived of their rights, and as we hear the argument of another group losing their rights—and I'm not sure about that—I would make a stronger case for the group that needs to have their rights restored.

So I disagree that we've ignored the privacy commissioner's statements. What we've done is bear it in mind in the total picture, and if we look at jurisdictions that have been ahead of us, the sharing of information has not been as traumatic as people believed it to be.

I've had contact—of course, as we've all had—with people very close to this issue, and again, I can't present a birth mother's perspective very well, but I have had a birth mother say to me, "Forty years ago, when my child went for adoption, I was promised that I wouldn't have information ever shared, because there's no way I wanted contact with them, but I do now."

When the speed limit is raised from 50 to 60, there is always the risk that somebody will die at the speed of 60 who wouldn't have died at 50. Everything in life is not perfect, but this bill is as close as we can get to giving the majority of people their rights and the right to know who they are, which is a fundamental right that was wrongfully taken away from this group. So I support the bill, because we have people in Ontario who are second-class citizens under the current legislation.

The Chair: Mr. Arnott, back to you.

Mr. Arnott: We're still speaking to motion 13 pertaining to the disclosure veto, which is fundamental. The parliamentary assistant talked about being from a small town. Like him, I'm from a small town. I grew up in the village of Arthur. I would agree with him that in most small towns in Ontario, people know their neighbours, know them well, and it's hard to keep a secret in a small town, but that's not to say that people don't have secrets in their past that the vast majority of their neighbours don't know about, and I would suggest that that, in fact, is the case.

I think about how this proposed bill is going to work with the establishment of a Child and Family Services Review Board. How is that going to work? If you use the example that Christina Blizzard talked about in her column this morning, there's a 70-year-old woman living in the village of Arthur who gave up a child secretly to have that child adopted when she was, say, 16 years old. She never told her husband perhaps, never told her children that she might have had afterwards. How is she going to come down to Toronto to make this presentation to the Child and Family Services Review Board?

Or, conversely, is this review board going to travel? Maybe the board is going to travel to have meetings at the Legion in Arthur, perhaps at some public building. This hypothetical lady can go to the Legion that day and plead her case. Perhaps all her neighbours are going to see her go down to this hearing. Perhaps at some point she's going to have to tell her husband that this is happening. How is this going to work?

Mr. Parsons: First of all, you make it sound like if we don't pass this bill, there's no risk whatsoever of the birth child showing up. I would suggest that the risk is actually greater without this bill. The bill will provide for the information to be shared, and that gives the rights to the adoptee. The bill also provides for no contact.

All of us at this table work heavily with individuals. Our job involves meeting hundreds or thousands of individuals in a year. I don't think that your constituents are any different from mine; they're good people. Those who wilfully abuse the law are the vast minority. Whether this bill exists or not, if an individual is going to show up at her door, they'd show up without the bill too. She acquires for the first time, the woman in the example, the right to say, "I don't want contact." It actually lessens the chances of having to do what she believes will be a bad experience. I'm not sure that it will, but she believes it will be a bad experience at the door. This bill lessens that chance.

Again, I don't think that people are a lot different in different parts of the world. In other parts of the world where they have no contact, it has proven to be very workable. I think it would be rare for an adoptee to want to show up knowing that the birth parent doesn't want to meet them. They're not out to cause trouble. I have not talked to an adoptee who is rabble-rouser, wanting to go out and make the world pay for their problems. They talk to me about what a good life they've had, but there's a piece missing in the puzzle. It's this great, big jigsaw puzzle and one piece is missing. Simply knowing the name and being able to go to a genealogy centre and do some research on the family—I've had an adoptee say to me that she found the name of her birth mother and she simply walked by her mother's house once a day, until one day she saw her out in the yard, and she said, "That's all I wanted. I just wanted to see what my mother looked like."

I appreciate that the concern is genuine from these individuals who are opposed to this bill, but I don't believe that they have perhaps grasped the full significance that for the first time they're getting some protection, which is no contact. I don't think that knowing their name is a threat to them; I really don't. Showing up at the house could present some complications, and that's all it would. That happens every day now. I think that both parties, if we could set the emotions aside and the rhetoric that's happening right now and let things calm

down, would say, "No, this does provide some stability to the process."

I'm running out of words to say. To me, it is so obvious that this is better than the present situation.

We foster. These are children who come into care because of their need of protection. It's a small community. How many of the natural parents know where we live? Virtually all of them. Either the word gets through the grapevine or the foster children talk. They have memories. They come with a family. They don't come in our door with nobody; they come with a family, and they will tell their parents. What problems do we have with individuals who have had their children forcibly taken away from them showing up at our house door? Minimal. They understand that there's a process and there's a system within which they work. We're a pretty civilized society.

To that mother you refer to, this doesn't increase the problems; this decreases the problems by enabling her, for the first time, to fill out a piece of paper that says, "I don't want contact."

If she doesn't want disclosure, what will it look like? That's going to happen during regulations, not during regulations to defer it from this debate, but because there may very well not be one answer. It may be a room like this—probably not, but it might be. Or it could be a telephone call; it could be a phone. I think in many of the examples that we've had given to us, it will be fairly simple to establish that this is valid or not.

1420

My hope, and I have great faith in the people who will draft this, is that what it ultimately will look like will be what best serves this community. I know we have people paid to draft the bill and to work in community and social services, but they are there for a reason. They are not there because they couldn't get any other job; it's because they have a passion for this. I have no doubt in my mind that that same commitment will continue.

I'm asking you on faith. These are people who worked for your government and delivered 100% also. I think that we may very well end up with a variety of processes and mechanisms that allow those parents who do not want disclosure to make their case.

The Chair: Thank you, Mr. Parsons. Back to you, Mr. Arnott.

Mr. Arnott: I've known the parliamentary assistant for a number of years, since his election to the Legislature. I know him to be an honourable member and I know him to be a member who demonstrates integrity in terms of his public responsibilities. I think that's something that is admirable.

Given that fact, and given the fact that he's also talked about how he used to be opposed to Marilyn Churley's bill in principle and now he favours Bill 183, how does he reconcile the fact that Bill 183 essentially breaks a promise or hundreds or thousands of promises that were made to birth parents at the time they gave up their child for adoption? Of course, I'm making reference to a presentation that each of the members should have in front of them from Queen's University associate professor Bruce Pardy. He notes on page 2, "Evidence already presented to the committee indicates that from about 1927 onwards, adoption records were sealed and parties in the adoption process were assured that they would remain that way. For many birth parents, that fact was important to their decision to give up their newborns for adoption."

We're told that is a promise that was made in thousands of individual cases, and that promise is now going to blow away in the air because of Bill 183. Didn't that promise mean anything? Why doesn't it mean something today?

Mr. Parsons: I was a member of the children's aid society board for over 25 years, and I chaired the board for a number of years. I was president of the foster parent association. I've been president of the adoptive parent association. We continue to foster. I'm not involved in the day-to-day operation of the agency, but as a small agency, I had some sense of it. Did our agency make thousands of promises? No, it did not.

I have no more evidence to dispute what you're saying than you have to present it. Again, that's what's been said, and I don't doubt your sincerity. I have a great deal of respect for you, and I appreciate your kind remarks about me. I was probably as close to the system as one could get without actually being an employee of the agency, and I don't remember thousands and thousands of promises. There are employees who may have. There has been reference given to me of written promises. I'm not aware of any; I've never seen any. I've learned to never say "never." Was it done somewhere in Ontario at one time? I don't know. I mean, the odds are that somebody somewhere did. But the question in my mind was, "If it was made, under what authority was it made, and by whom was it made?"

Do we base our bill and our decisions on an intangible promise that was made to someone that has the effect of removing the rights of another person? Because if that promise was made—let's assume it was—that promise at the same time said, "And your child has forfeited their right." "I promise you"—their child has forfeited their right. That's the second part of the promise, if it was made. That's the unwritten part, but it's there. That's how, I guess, I reconcile it.

The Chair: Ms. Churley, do you wish to comment on that question?

Ms. Churley: I do. Speaking from my own personal experience and that of many, many birth mothers I've been associated with over the years who have been dealing with this issue, some might have been promised verbally by a social worker—unauthorized but promised—"Don't worry, dear. Go away and forget you had a baby and get on with your life"; that kind of promise.

I certainly wasn't promised that, and this is just one story where it's quite the reverse for me. Had I been told that I would never, ever be able to get enough information to find my child, I don't know what I would have

done. It was the most critical aspect for me when I made the decision, and you have to remember that we made those decisions with a great deal of grief. We relinquished our babies with a great deal of grief because there was so much shame attached, in those days, to having a baby out of wedlock.

Most of us wanted to know that the day would come when we could find our children. I was promised that there would be enough information available. I was told about non-identifying information, and that some day there would be an opportunity to look for my child. Others were told, "Don't worry about it." People were told very different things. It was all verbal. I would say the reverse is true, Ted. I can't tell you what it's like to carry a baby in your body for nine months—your baby—to give birth to that baby—it's usually the first baby—and to know, when you're carrying it and when you're giving birth, that you're going to give that child up. You don't get to hold that child, and that is your child. It came out of your body. You nurtured it, and you know that you're relinquishing it. It's the promise—they promise that some day you're going to have the opportunity to reunite—that means everything to most birth mothers.

The answer to your question is that there's some real misinformation within that document about what birth mothers have been promised. Karen Lynn, who's here today, has said repeatedly and strongly in the press conference and to this committee that she was never promised. She's here with her birth son today; she's over there. Many, many other birth mothers came forward and told the same stories.

We have to listen to what we're being told. We have to read the learned documents that exist from experts in the field who have done in-depth studies who say the same thing. Those promises were not made. And if they were made, they weren't authorized; again, they would have been false promises. There's already so much information available out there anyway. You just have to look at an adoption order; you just have to look at the so-called non-identifying information.

I have to say that I think that question, Ted, to the parliamentary assistant was based on a false assumption.

Mr. Arnott: It was actually based on a presentation. It was brought to my committee's attention by Bruce Pardy, associate professor, faculty of law, Queen's University.

Ms. Churley: Well, he's wrong. There's evidence, and I can bring it forward, if you like. He's absolutely wrong. There's evidence to support that. There was no possibility, even if there were some verbal promises made. There were a lot of verbal promises made as well from other social workers that there would be an opportunity to find your children later in life. There could not have been an official—yes, some promises might have been made by some social workers, but it wasn't sanctioned. That is not the way the system worked.

The Chair: Is there any further debate on the topic? Mr. Jackson.

Mr. Jackson: I do want to respond to a couple of things. Ms. Churley read into the record the comments by Ann Cavoukian. It is a matter of record that the degree to which a patchwork of laws governing disclosure of adoption information in this province is rather checkered and has resulted in exposure for some individuals, but not across the board for all individuals. What has been noted, which was also part of the facts in this case, is that certain children's aid societies dealt with these issues differently from others. The subject matter that was just being discussed: In Catholic children's aid societies 30 years ago, when the decision was being made whether to abort a child or bring a child to term, those kinds of discussions were engaged in. We know that. We know that the state supports, for a variety of legal reasons, whether or not that information should be exposed for potential litigation. But were there women in this province who put a child up for adoption who were given promises that the child would never be able to identify them? Yes, there were.

1430

However, I want to move a bit beyond that. I think that Ms. Churley, having read Ms. Cavoukian's comments into the record, would also recognize Ms. Cavoukian's resolute commitment in this area to protecting certain people's rights, and the privacy rights of individuals have not wavered for a second. I wouldn't want members of this committee, nor the Hansard record in and of itself, to suggest otherwise.

Mr. Parsons said that we can't legislate emotion but we can legislate process. I couldn't agree with him more. Most of the amendments I have crafted on behalf of my caucus have dealt with process, and trying not to stray from a series of principles that I and my caucus feel very strongly about.

Before there's any more impugning as to where we stand on a certain number of issues, I want to agree that I have yet to find anyone who doesn't agree that the idea and the action of bringing blood relatives together, for a variety of reasons, isn't in and of itself a positive activity. There's no question about that. I stated that when the bill was tabled. We did, however, say that on this very difficult issue certain principles need not be lost in the process. Therefore, we strongly support the exchange of information that will assist anyone with health matters. It'll help them define who they are both culturally and spiritually. I even suggest that the existence of siblings—I think that's all important information. I also believe it's important that, if you know there's no knowledge of who your father is, your mother was 14 when she was raped. Having that information is important. I'm not convinced that I need to know where that woman lives. I've heard very strong arguments that are emotional on their part, but weighed in the balance they include the support of the privacy commissioner of this province and, for the record, every single privacy commissioner in our country. If, as Mr. Parsons eloquently states, this is a made-in-Ontario solution, then I submit to him, as I have seen from the evidence, that citizens of Australia do not enjoy the level of privacy protection that we enjoy here in Ontario.

That is a concern. It's a concern because it doesn't fit neatly into this legislation, but it is a right of a citizen of this province and it was put in there for pretty valid reasons. It had a lot to do with making sure that people with AIDS didn't read about it in the newspaper because someone had access to their medical files. Yet we embrace the principle that they have the right not to disclose that. We give that right to new immigrants who come to this country; we give them that right immediately. So it is a strong piece of legislation, and we are toying with its legal principle in this regard.

The third area of concern that I have and that we're not fixing in this legislation, and we should be, is that children in this province have absolutely no rights whatsoever. I am deeply concerned about the manner in which the state—our province, the ministry, the minister—is positioning the responsibility of persons in authority to maintain accurate records that can be given to a child on the occasion of them becoming an adult in the eyes of our court. Ironically, that isn't necessarily 18. In some instances, the courts have upheld that it can be as late as 21 or 24, frankly. Those of you with experience with developmental disabilities will know that under certain circumstances, we have a taffy pull with that age. But the bottom line is, we still haven't made these children citizens.

Therefore, the fourth concern I have is that we are not providing adequate counselling to assist them with a decision we are about to entrench in law to force them to confront issues of their past.

Retroactivity, the sixth area: It offends some people on its legal face, and I don't wish to dwell on that, but I personally can understand it. If we're going to have legislation which will, in effect, bring consenting parties together who previously have been unable to do so, then the retroactivity issue has to be dealt with. I can understand that.

That brings us to the importance of the disclosure veto for those few people who require it, and we are told that in the many jurisdictions that have it, it's not routinely abused. We've heard numbers in around the 20th percentile of persons who invoke a disclosure veto. This is not rampant rejection. There is still plenty of work for others to go through the files, to cause matches to occur. To the extent that they can be a really positive experience in their lives, it's wonderful.

However, when I look at the report of the law reform commission in New South Wales, even they were flagged and were themselves concerned that the strongest opposition to the retroactivity followed by unqualified and unfettered access came from birth mothers who had conceived as a result of incest or rape. The report goes on at length to discuss areas where contact vetoes have or have not been effective. If the members haven't read it—and I'm not going to take time to read it all into the record—many were deeply offended that they had to pay a fine in order to register some kind of veto.

This is again from the analysis by the law commission: concern that some adoptive parents felt that pressure groups had hijacked the debate leading to the legislation, that adoptive parents had no rights whatsoever under the legislation. They went on to comment about some of the observations about why the contact veto was problematic and why they've had to bring in a notice provision—something we will talk about, hopefully, in a few minutes.

1440

So I think it's important that Ontario has this legislation, but I also believe it has to have it done as a made-in-Ontario solution respecting the privacy rights of individuals. All those individuals—birth parents, adoptees, upon reaching the age of majority—should have the right to make those many matches, as is possible. But we cannot offend privacy rights on this front. If we do, we may as well begin the process of offending privacy rights in terms of health information and other matters of privacy.

I sense we're ready to—no, we're not? If you'd like to continue the debate, Ms. Churley, fine. I yield to Ms. Churley.

Ms. Churley: Yes, of course I'd like to continue the debate. Since we're not going to finish this in three days anyway, let's get some facts on the table.

Mr. Jackson: On a point of order, Mr. Chair: I think it's instructive to everyone that we will be finished at the end of three days because that's what the House leaders have told us. It will be deemed to have been completed on the third day, so any suggestion otherwise would be misleading.

The Chair: I'm pleased to hear that. Back to the floor.

Mr. Jackson: That's the House rules.

Ms. Churley: It seems that Mr. Jackson believes that therefore he should have the floor most of the time and the rest of us should not have it at all if we want to get to that point and to correct some things for the record.

I think it's important to say this every step of the way: When Mr. Jackson and others bring up a rape victim from many years ago who has concerns about being found, it should be comforting for them to know that if this bill is passed, there will be a contact veto. It should also be comforting for them to know—that's their position—that if their birth child were interested in finding them, it's most reasonable to expect, given that we know their surnames were more than likely on the adoption registration, that they would have been found by now. So while we raise those kinds of fears, it's important to put on the record and to say to people directly that that is, as already put out recently by the privacy commissioner, the reality of the situation.

I just wanted to refer briefly to the report that Mr. Jackson brought up by the New South Wales Law Reform Commission in 1992. The privacy commissioner refers to it as well, and I can assure you that I've read it from cover to cover more than once. The commissioner acknowledges that the LRC found the principal objectors to the new openness of adoption information to be adopting families. What she fails to mention is that the commissioner's report on the New South Wales Adoption

Information Act, 1990 was overwhelmingly, stunningly positive in terms of the act's principles, administration, effects and public acceptance. There were some concerns, as with any review, that were expressed, but the overwhelming thrust of that report was very positive. They documented some very interesting things. So again, because we've been quite selective here in the information that has been put out, I would urge everybody to take a look at the entire report.

I have in front of me something that was submitted to me by Karen Lynn. Her organization is working on this, and there will be more. In response to the previous question from Mr. Arnott about birth mothers, natural parents who were told by certain academics and others that they were promised anonymity from their children, here we have a list of 165 women, and my name is included on there, who have either reunited with their birth children or who are, tragically, still searching after many years—I won't read them into the record at this point because there are more coming; this is an ongoing project—telling the world publicly that they were not promised confidentiality. I think that should help Mr. Arnott as well in terms of women coming forward who actually lived through the experience and can tell us directly what they were told at that time.

The Chair: Further debate? If there is none, I will now put the question. Shall the amendment carry? Recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We'll move on to page 14. Ms. Churley, it's your motion.

Ms. Churley: 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 subsection after subsection 48.2(5):

"Same

"(5.1) 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."

The Chair: Is there any debate on the motion?

Ms. Churley: If I could explain this very briefly, it's self-evident. Should contact notice be filed and a person changes his or her mind about that contact notice, there should be some process in place to notify an applicant that that notice has been withdrawn.

Mr. Jackson: I've raised the question several times about the ability of the registrar general's office to manage this kind of paper flow. I support the amendment. I have other amendments that deal with elements of notice, as does Ms. Churley, but I'm not getting the level of comfort that the government understands that the department needs to be resourced in order to make this happen. Are we going to get support from the government for this motion and to the degree to which this represents an additional step? As you know, governments don't always like to get engaged in this, because failure to notify becomes an issue.

The Chair: I'm sure Mr. Parsons will make some comments on this. Mr. Parsons?

Mr. Parsons: No, our government cannot support this, for a number of reasons. I think that it's been actually articulated that it would require significant resources to commence this search function to find the parties and advise them. Given the challenges within the fiscal resources to manage the birth certificates and marriage and death certificate requests, this is not feasible, we think, from that viewpoint.

There indeed is the great potential of liability if a search is undertaken and is not successful. If there appears to be an obligation on the part of the government to find a party and they're unable to do it, it would certainly produce a question of whether the government is liable for that. So no, the government is a keeper of the records, but we don't believe it is reasonable or possible for the government to undertake a search function.

The Chair: Is there further debate?

Ms. Churley: I guess this does come at the nub of some of my problems with the bill, as you're aware: that there are certain obligations of the registrar general's office and the adoption disclosure agency that, for instance, right now, when there's a match made, there is an obligation for that department to contact. So there's a long, long waiting list, which is one of the problems, but at least there's an obligation to do that.

One of the big concerns that I have about this bill, as you know—and I do have amendments, and so does the adoption community, although we support the bill, obviously, in principle—is that all of the services that are now being offered by government are going to be stopped, like the so-called non-identifying information and this kind of activity. We want to know who, then, would be doing that. What is the plan, and who would be taking charge? Would this be a privatized service with a fee attached? How would it work?

1450

Mr. Parsons: I don't have an answer for that. I'm certainly of the understanding that it will not be a privatized service. Who will actually do it, whether it's a crown agency or part of a ministry, has not yet been determined. It's my understanding that it will be government of Ontario employees.

Ms. Churley: There are a lot of regulations to be written, and I know that there will be consultation with members of the adoption community. I would like to know if the adoption community will be brought in for consultation around these kinds of issues that we're talking about now, some of which are kind of hanging

out there at this point, and others that will need to be resolved for this new legislation to actually work.

Mr. Parsons: I'd like to refer that to the ADM.

Ms. MacDonald: Ms. Churley, yes, it is our intention to consult extensively with the adoption community with respect to any and all regulations contemplated under this bill if it is approved. We have made that commitment to the adoption community, and I'm happy to reiterate it now.

As Mr. Parsons says, the form of organization that a custodian may take, whether it's an agency of government or part of a ministry of government, is yet to be determined, but it is certainly intended to be a government function.

Mr. Jackson: It is clear, though, from the prior consultation that this is a very important issue for the adoption community, and it currently isn't found as a protection in the legislation.

Ms. MacDonald: I'm sorry, Mr. Jackson, I'm not clear on what your question is.

Mr. Jackson: It was clear from the consultation round that the adoption community has expressed concern about access to these kinds of services, and they are not included in the current framework of the legislation.

Ms. MacDonald: If your question to me, is, sir, was there consultation on some of these aspects, and were—

Mr. Jackson: No. Let me do it a third time for you. During the consultation process, when the adoption community came forward and spoke to government, this issue was raised that Ms. Churley has raised. It's been raised with me, it's been raised with her, and it's been raised by them that they're not expecting a simple librarian as a custodian of hard records; they are expecting somebody who can facilitate information for people who just want to be available for contact and don't necessarily want to engage in the dynamics of seeking out and doing the search. There are other implications to this.

You're fond of indicating how much consultation. I'm just asking, are you aware that that was a request made by the general adoption community: yes or no?

Ms. MacDonald: I am aware that that was a request made during the consultation by the adoption community and that doubtless there will be many other opportunities to have discussions on this topic.

Mr. Jackson: And the second part of my question: It's clear with the government amendments, as we have them before us, that there is no guarantee that that is the kind of—I have to memorize this—custodian function that will occur, guaranteed in legislation.

Ms. MacDonald: I would not be in a position to guarantee what the government might wish to do, sir.

Mr. Jackson: Yes, I guess, but that's not answering my question. You are aware of the government amendments; you've seen them all?

Ms. MacDonald: Yes, sir.

Mr. Jackson: Very good. So the ones that are currently before us, and given that the Liberals have indicated that they aren't bringing any more in, as it sits now, this kind of a concern will not be met as a legislated requirement.

Ms. MacDonald: The amendments, as they stand, would allow for regulation-making authority, which could address who can search, what kinds of searches, for what purpose, for what individuals; it would allow for regulations for the setting out of the business processes of the custodian; and it would allow for the setting out of the business processes of the Child and Family Services Review Board.

The Chair: Is there any further debate? If not, I shall put the question to a vote. Of course, it will be another recorded vote. Shall the amendment carry?

Ayes

Arnott, Churley, Jackson.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

The next one has been withdrawn. Therefore, we will be going to 15b. Is that Mr. Parsons? Section 48.2(11).

Mr. Parsons: Legislative counsel should have advised you, I believe, that because 15b refers to 15 and 15 was withdrawn, there's been a technical adjustment, removing the reference to amendment 15.

I move that section 48.2 of the Vital Statistics Act, as set out in the bill, be amended by adding the following subsection:

"Mandatory delay in disclosure

"(10) 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(7.1) or 48.4.1(6), the registrar general shall comply with the direction."

The Chair: Therefore, please note the number change. Any debate?

Ms. Churley: I'm sorry. I missed the explanation for this. I was reading something else. Can you tell me the impact of the withdrawal of motion 15? Does this replace it, and what exactly does it do?

Mr. Parsons: What 15b does is say that when the board refuses to issue an order prohibiting disclosure, the Office of the Registrar General requires the authority to delay providing the information to the party that requested it in order to give the other party the time to prepare and become mentally ready for the information to go.

Ms. Churley: Thank you.

The Chair: Any further debate on this amendment?

Mr. Jackson: We are leaving to regulation the amount of time, correct? Secondly, we are only delaying whether or not there is a—so it includes people who apply and fail, as well as those who apply and succeed?

Mr. Parsons: It's for people who apply and fail, who had an expectation that their identifying information

would not be disclosed, and the decision is made that the information will be disclosed. This provides the adoptive parent or the adoptee to prepare for that disclosure. But the Office of the Registrar General has no authority without this to delay the sharing of this information. It provides that office with the authority to delay it.

Mr. Jackson: Fair enough. Why are you only giving it to persons in this instance and not to all persons?

Mr. Parsons: The legislation provides the possibility for an adoptee to have their information not shared where it would present a risk to them.

Mr. Jackson: Got that.

Mr. Parsons: Because that's the only group that has that—

Mr. Jackson: Let me be more clear. The provision in the act in New South Wales is that all persons get the opportunity for a delay so that they can be forewarned or forearmed, whatever.

1500

When I read the New South Wales document, a lot of times people didn't file a request for a veto for a series of reasons. But in all cases in that jurisdiction, they were notified that someone was seeking their information. I think we're going to get in trouble with this principle. It'll be one of the principles that'll be argued in court, and it might be helpful if we considered allowing that just as a process of delay. That principle exists with the information and privacy commission now for all matters that we are subject to, and the rest of the world. There is a notice provision and a disclosure timetable. I think we're highly at risk in this whole business because we're not providing it on something of this magnitude, and I'm sure any of the learned judges will put it in that category.

I have expressed my interest and my bias in favour of if we aren't going to have a veto power, and it is just for those narrowly defined—and we've done that—it should exist for everyone that the state says, "In two months, we're going to be disclosing your information." I think if you've agreed to it here, I'm at a loss to understand why you don't embrace it as a legal principle and as a means of assisting people—hundreds of letters that you've all read and are causing a lot of discomfort. I'm just trying to understand why we're not offering that. I've got an amendment further on that which says that we will notify people. But that's simply so they can get their house in order and not have the surprise.

I'm not arguing with you; I'm just trying, at least in this area, to get an accommodation. I know it's more work, and it concerns me that it may be an issue, but lives are going to be crushed here—that's unavoidable—but at least if we give them notice. Just to be sure, when Ms. Churley was saying it was embraced so enthusiastically in New South Wales and she quoted 1990, that's when the legislation came in. The review occurred two years later, and the subject we're talking about came out of that review. I'm not discrediting the New South Wales legislation; I'm just saying that, upon sober reflection, this is something they put into their legislation.

Mr. Parsons: I apologize for coming to this committee meeting not familiar enough with the New South Wales legislation to debate it. We believe that the advertising campaign advising the people of Ontario of the change in legislation and the process that will be followed is in fact notice to all parties to be able to prepare them for the change in the processes required.

This one is very specific for a reason. This is because an individual, whether it be the adoptive parents or whether it be the adoptee, have made a request or a case for their information not to be disclosed, and I think it's fair to say they probably made it with some expectation that it would be granted. Psychologically, they have probably leaned toward the side that the information is not going to be given. So we're not talking generalities here; we're talking about a particular individual who says, "I've put in my case, and I think probably it won't happen." But then they hear back that, no, the information will be shared. So where someone has built up an expectation one way, it is only proper that they be given some time to adjust to the actual situation that's going to happen.

Notice to everyone that it could happen: that's because of the bill and the extensive advertising campaign. But this one focuses on particular individual cases where they have thoughts that turned out to be contrary to reality.

The Chair: Any further debate? Yes, Mr. Jackson.

Mr. Jackson: With all due respect, Clayton Ruby and his client are still filled with the same resolve they were four months ago. You will not be allowed to advertise this legislation because it will not become law, and it's the subject of a judicial review.

I'm starting to become a little more uneasy about the selective embracing of the work done in New South Wales, which is set out as being so good, and yet those elements that are sensitive to the needs of the public who are concerned about the legislation seem to be glossed over. I have an amendment, which I will be tabling in a moment, which deals with that issue, and we will speak to it.

It is now a matter of public record, which would ultimately find its way into our courts, that we can't afford it. That's generally instructive to our learned ventures. I'd be happier if the mandatory delay in disclosure was a legislated right. The mandatory delay in disclosure could be 24 hours. I know what the discretion is. The reg will be written in such a way that nobody can ever sue that they weren't notified in sufficient time. However, we've crafted legislation in the past—labour legislation is classic in terms of what constitutes notice to people, and it's right in the legislation.

That puts a positive onus on the part of the government to meet that standard, because its purpose is to protect the public. Its purpose isn't to make the job easier and less litigious for the bureaucracy; the purpose is to protect the public. I dare say, none of us will get the chance to see the regs unless we read our mail that comes through our offices in the large pile we get every day that

includes those matters that were filed in our provincial courts as regulations for the province of Ontario.

There is not a process that will involve members of Parliament in dealing with those regulations. The minister may be guided by the debate on the subject, and may at her current discretion invite people in to comment. But there's no obligation under the law to involve anybody in the crafting of regulations which are approved solely by cabinet. Even cabinet ministers don't get to really see them, as I recall.

This should be strengthened by giving a specific time frame for notice. For those persons in northern Ontario and other areas, time is an important issue. I would respectfully suggest that this should be strengthened by giving a fixed period of time that's reasonable.

Apparently, in New South Wales, a judicial panel involving the public and the community at large came up with two months. I think that's more than reasonable. But I'm nervous about leaving this to the vagaries of a bureaucratic determinant as to when they feel it's necessary to delay the disclosure.

The Chair: Thank you. Any further debate? I shall now put the question. Shall the amendment carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott.

The Chair: The amendment carries.

The next one will be page 15c, as originally called. Mr. Jackson, it's your motion, I believe, section 48.2.

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 subsection at the end:

"Agreement to prevent disclosure

"(11) Despite subsection (3), the registrar general shall not give the information described in subsection (1) to a birth parent if, before the adopted person reaches 19 years of age, a children's aid society registers notice of an agreement between the society and the birth parent preventing disclosure of the information to the birth parent."

The Chair: Any debate on the amendment? If there is none—

Mr. Jackson: Mr. Chairman, this raises the issue that I raised earlier on behalf of those women who in some instances with Catholic children's aid societies made the very, very difficult decision—and I can only imagine—to choose adoption over abortion. Those agreements, in my view, are legally binding. I cannot conscionably put my hand to legislation that takes that away from a woman. I don't even know if my caucus knows I've tabled this. I just feel very strongly that that was a contract between a woman, her conscience and the state, and the state is about to violate it. And it is a contract.

The courts will determine this question themselves, but as a legislator I'm not going to sleep if I sit silently by.

The Chair: Is there any further debate on this amendment? If there is none, then I shall put the question. Shall the amendment carry? It's a recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We'll move on to page 16.

Interjections.

The Chair: OK. We need a five-minute recess since another motion is to be written, so a five-minute recess, please.

The committee recessed from 1512 to 1520.

The Chair: We can resume discussions. We will start, as I indicated, on page 16. I believe it's Mr. Jackson's—

Mr. Jackson: It's 15d.

The Chair: So it's page 15d, not 16. Mr. Jackson, the floor is yours.

Mr. Jackson: I move that section 6 of the bill be amended by adding the following section to the Vital Statistics Act after section 48.2:

"Notice, delay of disclosure

"48.2.0.1(1) Upon application, an adopted person who is at least 18 years old may register a notice of his or her request for a delay in the disclosure of information and documents under section 48.2 to a birth parent.

"Birth parent

"(2) Upon application, a birth parent may register a notice of his or her request for a delay in the disclosure of the uncertified copies and other documents under section 48.1 to the adopted person.

"Effect of notice

"(3) If a notice is registered under subsection (1) or (2), the registrar general shall not give the applicant under section 48.1 the uncertified copies or the applicant under section 48.2 the information described in subsection 48.2(1), as the case may be, until,

"(a) the registrar general has notified the adopted person or birth parent, as the case may be, who registered the notice of request for a delay in the disclosure; and

"(b) 60 days have elapsed after the notice described in clause (a) is given.

"Other matters

"(4) Subsections 48.2.2(3) to (8) apply, with necessary modifications, with respect to a notice registered under this section."

Having tabled that, I have spoken in part to this at some length. Just to briefly review, the principle of advance notice is one which other jurisdictions have embraced, specifically those that have embraced a retro-

activity provision and an unfettered access to information.

We have heard compelling arguments. I will read one of them back into the record, and I want the notion that people are going through immense emotional turmoil. They need to be given some notice other than in advertising on television, because again, the literature from New South Wales indicated that the level of awareness was still very poor, and even advertising campaigns are not going to deal with this issue. It's not like a person who has a secret is going to have six of their friends call up and say, "Isn't that great news that the government has done this change?" Most of these are secrets to many people.

Again, the case that was brought to our attention—it has been read into the record before—about the statement: "I was raped at the age of 17. I became pregnant after that and gave up the child for adoption. It would be a nightmare for me to have to face the whole situation." It goes on, and members are familiar with the desperate nature of that individual, but I don't wish to put it on the record again.

So many pleaded with us, "At least give us sufficient time." I know that, as hard as it is for some members to put themselves in the shoes of some of these individuals who do not wish to be contacted, many sit in fear every day that it could happen, but others don't because they know their records that are identifiable have been to a degree sealed. Ms. Churley has clarified that not every single record in the province is in that category. It's just that a very large number of them contain information that would be extremely helpful to create an immediate match.

One has to consider that the question people are going to agonize over is, "Should I disclose this to everyone and perhaps upset people, break somebody's heart, cause me to break my marriage or do any of those things on the sheer thought that someone may call? But if I know that someone is seeking me out"—and that's what is implicit here: You're being notified that someone has requested your information. Now you know that the process has begun and you can make the decision that, in effect, "Now that my privacy will be disturbed, I have to deal with it." But I don't think the legislation and an advertising campaign are going to change the hearts and minds of Ontarians who don't wish to deal with this. That's a very important distinction here. Clearly, in Australia they've come to similar kinds of conclusions about the impact. Had we had progressive legislation years ago and had all adoptions for the last 20 years been fully disclosed, there wouldn't be this kind of problem. It just so happens that those records that aren't easily accessible are predominantly much older files, and there are people who are rather well advanced in their ages who are concerned about these matters.

I think the members have heard my concerns in this area. It's clear that the government is not looking for work for this registrar general. But good legislation should be defined on behalf of citizens as to its effect, and it should be defined on how it helps our citizens and not by how easy it is for our bureaucracy, which is about to shrink considerably in this instance, and about how dwindling resources are preventing us from doing the right thing in this case, which is to let people know that when an application has been made, the government will be releasing their privacy records. Again, this right exists under certain circumstances in our courts, this right exists in certain circumstances for women in our court system who are victims, and it exists under very limited cases with respect to health information, but the principle of notice is the principle here that we're desperately trying to make sure finds its way into the legislation.

Ms. Churley: I actually don't have a problem with this amendment. We're talking about 60 days here. There are circumstances, very limited circumstances, but it could be important for some people, and we're not talking about a lot of time.

I would point out that for section 48.2.0.1, "Upon application, an adopted person who is at least 18 years old may register a notice of his or her request for a delay in the disclosure of information," if I'm correct, this bill is the same as my bill in that there is a year's delay and it actually kicks in when a person turns 19. Is that correct? Am I right on that, that there is a year's delay anyway within this bill too?

Ms. Krakower: Yes, you're right.

Ms. Churley: OK.

Interjection.

Ms. Churley: Well, I don't know if it matters in terms of what you're trying to do, but that year is given just to give a person time once they reach adulthood at 18, so there is that year's time for the person to go through the process. I don't know, within the context of this motion, if it makes any difference. I don't think it does.

Ms. Yack: At 18, the adoptee can register notice, and the birth parent cannot get access to information until the adoptee is 19.

Ms. Churley: Yes, that's right.

1530

Mr. Parsons: Many of us, as members, have mailed out newsletters or items of interest to a substantial number of people. I think one thing that always impresses me is how many people have moved since the last mailing. We live in a highly mobile society, and I always get significant numbers of letters back where the person is no longer there.

This amendment, again, does what I expressed caution and opposition to earlier: This requires the registrar general to undertake a search function, to staff themselves and to expose any government to liability if they are unable to find that person. I can't support the amendment because I do not believe realistically that the resources are there to do a search function to find the adopted person or birth parent. It is not physically possible. I do not support the motion.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry? This is a recorded vote.

Ayes

Arnott, Churley, Jackson.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment on page 15d does not carry.

The next one is page 16. Mr. Jackson.

Mr. Jackson: I move that section 6 of the bill be amended by adding the following section to the Vital Statistics Act after section 48.2:

"Disclosure veto

"Adopted person

"48.2.1(1) Upon application, an adopted person who is at least 18 years of age may register a disclosure veto prohibiting the registrar general from giving an applicant under section 48.2 the information described in subsection 48.2(1).

"Same

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

"Birth parent

"(3) Upon application, a birth parent may register a disclosure veto prohibiting the registrar general from giving an applicant under section 48.1 the uncertified copies described in subsection 48.1(1).

"Withdrawal of veto

"(4) Upon application, the adopted person or birth parent, as the case may be, may withdraw the disclosure veto."

The Chair: Any debate on the amendment?

Mr. Parsons: This is yet another amendment that has the effect of destroying the bill. This is an amendment that would remove the rights of birth parents to have access to information regarding their child. It is 180 degrees counter to the intention of the bill to restore right of access to information. I cannot support it.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry? A recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Wynne.

The Chair: The amendment does not carry.

The next one is on page 17, by the government. You may read the motion.

Mr. Parsons: I move that section 6 of the bill be amended by adding the following section to the Vital Statistics Act after section 48.2:

"Disclosure where adopted person is deceased

"48.2.1(1) A child of a deceased 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 respecting the adopted person.

"Age restriction

"(2) The child of the adopted person is not entitled to apply for the uncertified copies until he or she is at least 18 years old.

"Disclosure

"(3) Subject to subsection (4), the applicant may obtain the uncertified copies 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 age and identity and otherwise complies with the requirements applicable to obtaining a certified copy of any birth registration.

"Restrictions, etc.

"(4) Subsections 48.1(3.1) to (10) apply, with necessary modifications, with respect to the application."

The Chair: Mr. Parsons, I have to declare this amendment out of order, and the reason is that it is an established principle of parliamentary procedure that an amendment is out of order if it is beyond the scope of the bill as agreed to at second reading. This amendment proposes to expand the class of people covered by the bill beyond what is set forth in the long title. Therefore, I would declare this not to be in order.

Mr. Parsons: I express my regret.

The Chair: Of course you can, or you can ask for—

Ms. Churley: I wanted to ask a question about—

The Chair: Let me deal with Mr. Parsons and then I'll recognize you.

Mr. Parsons: Yes, because not accepting that this restricts the rights of a certain group of citizens. At the present time, adult children of non-adoptees can access the birth information on their parents. What this amendment would have done, had it been accepted and passed, was it would have provided the adult children of adoptees that same right to access the information. It levels the playing field, because to not accept it leaves one group with fewer rights than the other. Is there a mechanism or an appropriate place to deal with this, to provide equal rights?

The Chair: I suspect that if you ask for permission from this committee, if there is unanimous support, there is a possibility. But nonetheless, why don't you think about that while I recognize Ms. Churley and see what her comments are. You may want to do that.

Ms. Churley: Mr. Chair, that's what I wanted to ask. If there's unanimous consent from this committee, can we then deal with the amendment?

The Chair: You're asking for it, and I will ask the question.

Ms. Churley: Yes, I am asking for unanimous consent.

The Chair: Do I have unanimous consent?

Mr. Jackson: A question of clarification: You're saying that the children of a deceased adopted person at

18 will have access to their mother's or their father's records that the mother or father may have never seen. Am I getting that right?

Ms. Laura Hopkins: Mr. Jackson, I believe that the effect of this is that the child of the deceased adopted person would have access to the adopted person's birth parents' records.

Mr. Jackson: OK. So that means if the parent of the child, who the Chair says is outside the scope—if the mother hasn't disclosed to the children anything at this point, the kids will now be able to find out about, on behalf of their deceased mother, what information—

Ms. Wynne: Grandchild.

Mr. Jackson: The grandchild will then be able to—well, I guess—

The Chair: Let me ask this question: I know you're trying to appreciate the motion, but do we have unanimous support to entertain the motion or do we still want to ask questions? Let's see if there is unanimous support.

Mr. Jackson: At this moment, there is not unanimous consent.

The Chair: OK. Then continue.

Mr. Jackson: There are the issues around grandparents' rights, and I haven't thought that through in terms of legislative initiatives that are occurring in family law and I'm not even sure this has been thought through on the part of the government about its impact, or some of those legal cases that are finding their way on to our desks right now on matters of custody and support. You're moving into an area which can impact that by virtue of entrenching, for the first time, grandchildren's rights.

I'm not saying no; I just need to think this through. This is huge in terms of—

The Chair: Mr. Jackson, let me understand what's happening.

1540

Mr. Jackson: You understood me correctly. At the moment, it does not have unanimous consent.

The Chair: So then there is no need to discuss the matter any further. If there is unanimous support—

Mr. Jackson: Thank you, Mr. Chairman.

Mr. Parsons: Only to clarify, because I think there's a misunderstanding—

The Chair: Well, then I'll be happy to hear from you before we move on.

Mr. Jackson: You've ruled, Mr. Chair, and there is not unanimous consent.

The Chair: Mr. Jackson, if we can continue—

Mr. Jackson: I can begin the debate.

The Chair: Excuse me. Until today, we had been trying to understand what we were doing before ruling. Maybe it was my error in not giving more time to Mr. Parsons to explain his amendment. If you'll allow me, I would ask him to clarify anything that he would wish to, and then I will ask again if there is unanimous support. If the answer is no, we will move on to the next one, because we cannot debate something that is not properly on the table.

Mr. Parsons: I want to explain what it is, because the information that's been shared at the table is not quite correct. This would allow the child of a deceased adopted person to access the deceased's birth record—not the grandparents, but the parents. The rationale for that is not just to provide equity, but if an individual has a health problem, we've been thinking to this stage that they need to access their natural family. But if the parent who has that information is deceased, this will enable them to get the information as to who their birth parent was and potentially open the door for them to start down the chain, then, to find a relative who can share the medical information with them. Without this, if an adoptee dies, the children lose all access to that chain of information. We're not talking grandparents' rights; we're talking rights to get the information on their parent.

The Chair: Are there any questions or comments, to make sure that we appreciate what Mr. Parsons is proposing? I recognize Ms. Churley and then Mr. Jackson, only for questions. I don't want to hear any comments, please, at this point. The floor is yours.

Ms. Churley: I would suggest that we stand it down if the Conservatives need to look at it a little more. My question would be, have you heard from a lot in the adoption community that this was a gap in the bill, a serious problem with having so many older people—

The Chair: Excuse me.

Ms. Churley: —it's a question—and is that why it's put in?

The Chair: Excuse me, Ms. Churley; I want to get some order here. The only question that I'm going to allow at this point is to clarify what the motion is saying. If we are trying to look for more facts, I don't think this is the right place, because there is no motion on the floor. Can we just—

Ms. Churley: I understand that; I do. The Conservatives were able to put on the table in great detail why they were opposing it. Because that's happened, I think it's only fair that, at the very least—could I, in this context, ask that we put it aside until the Conservative members can look at it?

The Chair: Let me see if Mr. Jackson has a question, and then I can do that.

Ms. Churley: Could you do that? It's very important.

The Chair: Mr. Jackson, before you ask anything, please limit yourself, if you can, only to specific questions on what the motion is trying to do, and then we'll move on.

Mr. Jackson: As I understand what Mr. Parsons has shared with us, the child referred to here of a deceased parent would know the medical history of their mother or their father. They would have all relevant medical information about their parent.

Interjection.

Mr. Jackson: Of course not—well, no; they've turned 18. There's a presumption here that the natural-born child of an adoptee—

Interjection.

Mr. Jackson: Let me finish, Ms. Churley. I'm trying to—

Ms. Churley: Well, are we debating this or not?

The Chair: We are not debating this.

Mr. Jackson: I was asking a question, until I was interrupted.

The Chair: You still have the floor for a question.

Mr. Jackson: I'm asking if I'm understanding correctly. Mr. Parsons said that it's for medical records. Fine. But it's not the medical records of the grandparent; it's the medical records of the mother.

The Chair: Is that the case, Mr. Parsons?

Mr. Jackson: That's what I heard you say.

Mr. Parsons: Yes.

Mr. Jackson: So if I'm the child who's now of majority, and I have known my birth mother for at least 18 years—she's been alive on this earth, or whatever—

Mr. Parsons: Maybe not.

Mr. Jackson: —or maybe it's 35 or 40 years, whatever—then I would be probably aware of my mother's medical condition. I would have no idea of my grandparents' medical records. I think the concept may be noble, but I'm trying to understand if it gives the effect that you're seeking. That's all. That was a question, and I believe it's been clarified. Thank you.

Mr. Parsons: No, it's not.

Mr. Jackson: No?

Mr. Parsons: The parent may have been deceased for years. There can be a 19-year-old whose birth parents have been dead for 18 years. So they've not had access, but now they want access to who their parent was.

Mr. Jackson: By your example, if they died when they were one year old, which was the example you just gave me, they've got to wait 17 years before they can have access to it?

Mr. Parsons: Yes, that's correct.

Mr. Jackson: How weird is that?

Mr. Parsons: Better than nothing.

The Chair: I will ask the question again: Is there unanimous consent for this amendment, yes or no? None. There is none. So there is no motion on the floor.

Therefore, shall section 6, the entire section, as amended, carry?

Ayes

Churley, Fonseca, Leal, Parsons, Wynne.

Nays

Arnott, Jackson.

The Chair: Section 6, as amended, carries.

We are moving to page 22, which is section 8.1. It's a new section. I believe, Mr. Jackson, you did introduce or give this motion.

Mr. Jackson: I move that the bill be amended by adding the following section after section 8:

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

"'Public notice

"'48.4.1(1) The Minister of Consumer and Business Services shall ensure that notice of the following matters is widely advertised in accordance with this section in daily newspapers and on the ministry's Web site:

"'1. The changes made by sections 48.1 and 48.2 relating to the disclosure of adoption-related information to adopted persons and birth parents.

"'2. The process for registering a disclosure veto under section 48.1 or 48.2.

"'3. The process for registering a notice under section 48.3 that an adopted person or birth parent does not wish to be contacted.

"'Same

"'(2) Notice of those matters must be advertised 120 days, 90 days, 60 days, 30 days and seven days before sections 48.1 to 48.4 come into force.'"

The Chair: Is there any debate on the amendment?

Mr. Parsons: With due respect, we believe this more appropriately belongs in the regulations. This is an operational matter, not a matter for the bill, which deals with the philosophy and principles of adoption disclosure.

The Chair: Thank you. Is there further debate? Mr. Arnott?

Mr. Arnott: Clearly, the amendment makes a point that there needs to be substantial public information; there needs to be advertising. What exactly is the government's commitment? If they claim that it's going to be dealt with in regulation, surely they must have a plan to publicize the passage of this legislation, assuming they do pass it. What exactly is the commitment?

Mr. Parsons: I think there's a tremendous obligation on the part of the government to extensively advertise this for some time. A wide advertising campaign over a month would not be sufficient, because people not only need to know about it, but they need to psychologically prepare themselves for the changes. Whether the advertising campaign is 10 months or 14 months, I think, is better left to the regulations stage and to the people who implement it, but failure to do it extensively over a period of time would destroy the spirit of the bill. I'm not prepared to commit to the number of ads or the exact time frame, but I am prepared to commit that it will be extensive.

1550

Mr. Jackson: There are two parts to this. One is a loosely defined schedule. The other is that certain sections have to be highlighted, and, in my view, it's not uncommon for advertising agencies for the government to put the best face forward on these matters. Let's just give an example: In my wildest dreams, I don't think anybody's going to expect the government to say that this bill is controversial with the privacy commissioner. It won't have a disclaimer saying, "There may be concerns for privacy and you may wish to seek legal counsel." The advertising will be at a very superficial level, saying,

"Call this 1-800 number or check this Web site and you will see how wonderful this legislation is."

I recognize that's the right of the government. However, again, when we read some of the anecdotal references from the law commission in Australia, they talk about advising people properly of their rights under the legislation. Will the legislation specifically say that all adoptees now have the right to have access to identifying information and matches will be made? Maybe, but I doubt if it's going to say, "If you were sexually assaulted or you were physically abused, or if you were the ward of the children's aid and in child protection, you have a right to be notified." Again, I doubt that that's going to be in there. This is going to be a picture of a nice suburban property, there'll be a knock at a door, somebody with outstretched arms is going to cry "Mommy," the two will embrace to a background of soft music, and then it will fade to the logo of the province of Ontario. That's what we're going to get. You know what? OK. I think we've been given a bit of a mandate here since we've acknowledged, begrudgingly on the part of the government, that there are people whose personal lives will be put at risk, either physically or emotionally, at the prospects of disclosure and/or contact. This is in here because the advertising has to include this.

I recognize this isn't the norm, but we have had legislation before that references full disclosure to the public. If you want me to delete the section saying "notice of those matters," I would consider that amendment, so that I'm not obligating the government to how many of these images that the government would like to convey. I want to make sure we embrace the notion that we're honest with the people of Ontario when we include the fact that under limited circumstances, you can apply for a veto. I'm not a betting person under any circumstances, frankly, but I'm trying to fathom something that I could offer. I have the utmost confidence that you're not going to deal with this issue when you talk about your new legislation.

That's really what the issue is here, and I'm prepared to drop the frequency of dates since that is Mr. Parsons's concern. In fact, I'm going to do that right now, Mr. Chairman, and I would just simply want to make sure that those issues that speak to the issue of protecting persons and providing them notice that there is an appeal they can file—that that finds its way into the advertising. Thank you, Mr. Chairman.

The Chair: I thank you, and I'm going to double-check legally if that is possible, what procedure to take.

He has dropped a section of the amendment. Would that be OK, or should we go through another formality?

Mr. Jackson: Technically, I could separate my motion and ask for that. That's a long, cumbersome way and then we get to vote in each section. I'd prefer just to—

The Chair: Normally, I agree with you, that that's the case, but I want to make sure that at this level, at Queen's Park, that it's proper. Mr. Parsons, do you have some comments, and then legal will look into it in the meantime?

Mr. Parsons: I have more faith in the ministry staff than the member does, evidently. If I look at the advertisements and information being shared by our government over the past two years, I am quite frankly proud of the lack of partisanship and the lack of glitz in it. It is our belief that the more open and more clear these ads are, not only is it better for the people of Ontario, but it is an easier workload for our government and for our staff. I have no doubt that every step will be taken to provide as much information as possible to the public so that they are able to make informed decisions and, when they do contact us, they will know the right questions to ask. It is in everybody's best interests to be as descriptive as possible in the ads.

The Chair: Can I then have staff explain what would be the best way to proceed? Then we'll decide what to do.

The Clerk Pro Tem: Procedurally, Mr. Jackson should move that as an amendment to the motion, which will put debate on that and debate back on the amendment. If there is consent to withdraw his and have it deemed removed without the bottom section, that will get us right back to where we are now.

The Chair: And then we can proceed whichever way you want. I think that would be the easiest way; otherwise there will be two discussions at once.

Do I have unanimous consent that Mr. Jackson's suggestions be accepted? I do.

The motion on the floor is that Mr. Jackson suggested removing the section. Is there any further debate on that motion?

Mr. Jackson: I was asking Mr. Parsons if he objects to including reference to the access to the veto information as part of the advertising.

Mr. Parsons: I simply don't believe it's necessary. I think it's an inappropriate precedent to include regulation-type material in a bill.

Mr. Jackson: Well, it's a section of the act.

The Chair: Sorry?

Mr. Jackson: Just for clarification, it's not a regulation; it's this section of the act that advises the public of their rights under the act. So that has to be included in the advertising.

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

Ayes

Arnott, Jackson.

Nays

Fonseca, Leal, Parsons, Ramal.

The Chair: The amendment does not carry. The next one is section 9, page 23.

Mr. Parsons: I move that section 48.5 of the Vital Statistics Act, as set out in section 9 of the bill, be

amended by striking out "sections 48.1 to 48.4" and substituting "sections 48.1 to 48.4.5."

This is a technical one. It empowers the registrar general to unseal the records that had been sealed.

The Chair: Any debate? If there's none, I shall put the question. Those in favour? Recorded vote.

Ayes

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: The amendment carries.

Shall section 9, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal.

Nays

Arnott, Jackson.

The Chair: The section, as amended, carries.

We are going to a new section, section 48—I'm trying to figure out who will introduce it. Mr. Jackson.

I think we have a friendly motion here.

Should I ask who wishes to introduce it? Mr. Parsons, do you have any problems with Mr. Jackson—Mr. Parsons, you have the floor.

1600

Mr. Parsons: I have 24 as a government motion, if I could move it.

I move that the bill be amended by adding the following section after section 9:

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

"'Review re disclosure of adoption information

"'48.6 The Lieutenant Governor in Council shall ensure that a review of the operation of sections 48.1 to 48.5 and section 56.1 is conducted within five years after section 9.1 of the Adoption Information Disclosure Act, 2005 comes into force.'"

The Chair: Thank you. Is there any debate on this amendment? Mr. Jackson?

Mr. Jackson: I'm just trying to check against the previous one—"48.1 to 48.5" covers 48.5, so that is covered. And 56.1: Operationally, what is that section? Could somebody help me out?

Ms. Yack: The offences provisions.

Mr. Jackson: OK.

Mr. Arnott: Mr. Chairman, I'm just curious as to who would conduct this review and why the government has determined that it would be appropriate to review after five years as opposed to, say, three years.

The Chair: Mr. Parsons, do you have an answer to that?

Mr. Parsons: I'm assuming that it will be the Minister of Community and Social Services or their designate responsible for the review. It's intended to catch any glitches or gaps that have existed in this legislation. Although we believe this legislation addresses all of the concerns, the reality is that we know there may be other things that will come to light. Five years is considered a traditional length of time to have identified problems that occur within a bill, so that's why it's five. It seems to be a fairly traditional number.

Mr. Jackson: We have heard on three separate occasions just today that the ministry is really short of resources, and the only real forum that seems to have any resources is a legislative committee. So I would ask to get assistance to ensure that the review is done by an all-party committee as opposed to an internal review by the ministry. As we know, the way this is worded, there isn't a guarantee that it will be made public; it just requires that someone does an internal review. So I would need some assistance to make the review public and that it be done by a legislative committee. There are umpteen dozen examples for us to draw from.

Mr. Parsons: I can recall on three instances referring to the challenge in resources for the registrar general, but the intention of this would be for the Ministry of Community and Social Services to be responsible. In terms of resources, the individuals who assisted in the preparation of this bill are probably the best people to deal with any changes that need to come. The Ministry of Community and Social Services is tremendously under-funded and needs more resources—right?—but I don't recall saying that. This is an extremely important bill. Resources were found to bring it into place now, and resources will be provided if there is a need to tweak it at some time.

Mr. Jackson: This is unacceptable. The notion that a ministry which is about to rid itself of a substantive amount of responsibility in the subject area is going to evaluate its impact is rather unusual in the province of Ontario, but in effect that's what we're doing. I'm sure the auditor, if he does get to this program at some point—and he may, and may choose to do so before the five years—he will look back and say, "What were we thinking?" The precedents that I could quote ad nauseam are that the review not be undertaken by the very people who are responsible for its discharge any more than we should ask the children's aid societies to do an evaluation about how well they've handled the disclosure.

The principles, if we're going to do this, are that it be a public document, which this does not require it to be, and that it be done with some degree of independence. Even the much-touted New South Wales effort was independently reviewed, and in two years. It came in in 1990. By 1992, they were already beginning to look at ways of strengthening and improving it.

The sections that you're dealing with, in terms of potential for filing permission to have a veto, are unproven legislatively. Those should be evaluated with the input of the public generally, and with the legislative committee—that is a foregone conclusion. There is no requirement—and I can give you some examples of legislation that is reviewed that does not require any

contact whatsoever with the public. In my view, this allows the government to say, "We're going to review it in five years." But that would be deeply misleading, because they're not; they're letting their bureaucrats evaluate it for them.

I have to stand this down until I can craft an appropriate amendment that I think better reflects the wishes of the adoption community. I have whole sections here that the adoption community is quite concerned are missing from this act. I know that they are concerned. They will probably be consulted—I'm not impugning any motive there—but they can only be consulted about those items that fall within the scope of the legislation that we are in the process of approving before Friday afternoon.

Under a review, all matters then become available for us to review, and we can embrace the adoption community, and Ms. Churley can fly in from Ottawa and make a presentation.

Interjection.

Mr. Jackson: Listen, she may think I'm a disgrace—

Interjection: She didn't say that.

Mr. Jackson: She did say that—but I still think the world of the person, and will continue to.

Ms. Churley: You're predicting my victory.

Mr. Jackson: Well, I think you'd be a good addition to any House, the federal one included.

Having said that, I feel very strongly about this. Let me put it to you another way: There's absolutely no need for us to approve this, because they don't need to put that in the legislation. As a former minister, if I wanted to review something, I merely had to issue it as an order. What is of concern to me is that they are only reviewing the operational components, so it's an internal review of operations by the very people who are required to.

I hate to say it, but a good minister is supposed to be on top of this anyway. Good, strong bureaucrats in the department should be on top of it. If there is concern that they are incapable of being able to handle it, that's another issue, or if they feel the resources will be so badly impacted in Comsoc that they have to have this in order to protect any ability to evaluate their programs in these key areas, I think this says that we as a Legislature aren't interested, nor is the government interested, in reviewing anything about this bill, save and except the narrow sections of 48 and 56.

1610

So I respectfully request that it be stood down until we can craft something that, in my view, reflects more what the adoption community is seeking in terms of an ability to input. You may find operationally that there are serious problems associated with the quality of the information, that the whole custodian component that the government has isn't working and that we actually have almost an impediment to creating matches because that arm of the government that was required under the current law to assist wasn't assisting any longer.

I think this should be done in an open forum and it should be done in an accountable forum. Both of those describe the process that we're currently in.

The Chair: Mr. Jackson has asked that we stand it down. Do I have unanimous support to stand it down? Yes or no?

Ms. Churley: May I ask a question?

The Chair: A question, yes; no comments.

Ms. Churley: The question would be whether or not, if this is passed as is, there cannot be more in dealing with the adoption community through a more fulsome regulation about a review of the entire—or whatever parts. Could that be done through regulation after consultation, or do we need to get it in legislation? It's my understanding that a review can come at any point, as long as there's—

The Chair: Staff?

Ms. MacDonald: It would not be normal to deal with it in regulation, Ms. Churley. An example I can draw for you as a parallel: The ministry is currently completing a five-year review similar to this, under the authority of the minister, of the college of social work and social workers act. That is a review being conducted by the minister under the minister's authority, using an outside consulting organization in addition to staff support. But normally you wouldn't spell that out five years ahead of time or in a reg.

The Chair: Is that clear? Do I have unanimous support to stand it down? I do. Thank you. It is stood down.

The next item is section 10, page 24a. Mr. Jackson, please.

Mr. Jackson: I move that subsection 56.1(1) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by adding at the end, "or a birth parent's spouse, parent, child, sibling or any other member of the birth parent's family, either directly or indirectly."

The Chair: Is there any debate on this amendment?

Mr. Jackson: I need to see my copy of the act.

Interjection.

Mr. Jackson: Could legislative counsel lend—me, for sure, and maybe Ms. Churley, a copy—I've got this huge binder, and I don't have my act in front of me. I'll just borrow it briefly. Thank you.

I'll just read for the members. Subsection 56.1(1) speaks about, "If ... an adopted person receives notice that a birth parent does not wish to be contacted, the adopted person shall not knowingly contact or attempt to contact the birth parent, either directly or indirectly." What I've indicated is that if we have a no-contact veto, that no-contact veto prevents the individual from contacting the birth parent's spouse, parents, the child or sibling or any other member of the birth parent's family, either directly or indirectly. We heard, on many occasions, groups saying that in other jurisdictions, the problem was that people would avoid talking to the birth mother but would contact her husband or would talk to other sons and daughters. This is an important question, because what ultimately is the purpose of a contact veto? If the purpose of a contact veto is to be some sort of legal sop to the community at large, then fine; we can leave it the way it is. But if in fact we, as legislators, are

genuinely concerned that the adoptee can get identifying information but they are required by law not to invade the personal privacy of the subject person and their immediate family, I want that coded in legislation so that the $50,000 fine would apply to all those individuals.

Mr. Parsons: We believe that's in the legislation now and that it requires that if there's a no-contact indication, one cannot contact either directly or indirectly. I don't think there would be any question that contacting a relative or a sibling would be interpreted by a court as indirect contact.

We believe this is not necessary. It is already covered under the indirect contact requirements.

Mr. Jackson: The legal opinion that we received is that "directly or indirectly" means that you cannot come into personal contact. There are two separate legal issues here we're raising. The legislation says that you can't hire a third party to walk up to your mother and say, "Hello, I'm here." That's what "directly or indirectly" means, because it flows from the individual. It's the access point to that person. Why this is in other legislation is that it includes immediate family members.

I have letters on file that say, "They went to my next-door neighbour. They had tea with the next-door neighbour. The next-door neighbour told the whole neighbourhood." We can't build legislation like that, but I think it's deeply, deeply disturbing that the first people who are going to find out about it are your son and daughter, that, "You've got a half-brother or a half-sister." Either we have a no-contact provision, which the government trumpets, which is the protection mechanism it says it is, or we don't. But clearly, by using the wording I have, that is the legal intent.

Again, I'm surprised that members haven't looked at some superior court decisions where—the comments we make in these committees are sometimes brought in as evidence because it is the public domain. Mr. Parsons is speaking for the government. He's indicating that he interprets it that it's adequate. I was giving him a different legal opinion because then he has the opportunity to include it in the legislation to ensure the protection. I'm putting at test your statement that in fact there's adequate protection. I'm telling you that legally it is not. This current wording here, right now: It's debatable whether I could take an ad in my local newspaper and say, "Here's who I am; I'm looking for so and so," and give all the defining features save and except the name—it's still not covered under this. I'm talking about, directly or indirectly, the individual who has had their privacy rights abrogated—this is the only right that they've been given under the legislation, that they have a contact veto. The way to avoid going to court for a $50,000 fine is to make sure you've talked to one or two other members of their immediate family. The law doesn't say that you can't contact them specifically; it says you cannot contact them indirectly.

1620

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

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: The amendment does not carry.

Mr. Jackson: I move that subsection 56.1(2) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by adding at the end, "or the adopted person's spouse, adoptive parent, child, sibling or any other member of the adopted person's family, either directly or indirectly."

The Chair: Any debate on the amendment?

Mr. Parsons: As with the previous amendment, I would just reinforce my comments.

The Chair: Any further debate? If there's none, I will put the question. Shall the amendment carry?

Interjection: Recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: The amendment does not carry. Page 25, Mr. Parsons.

Mr. Parsons: I wish to withdraw this motion, as it is related to motion 17, which you very harshly ruled out of order.

The Chair: So that's withdrawn.

The next one is page 25a.

Mr. Jackson: Before we go past subsection 56.1(3)—we're still on section 56.1; we are at subsections (3) and (4)—I wish to discuss penalties in subsection 56.1(5). I don't want to go beyond that.

The Chair: There are two subsections prior to that.

Mr. Jackson: All right.

Page 25 is moved out of order.

I move that subsection 56.1(3) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by inserting "or a member of the birth parent's family" after "contact or attempt to contact a birth parent."

The Chair: Is there any debate on this amendment? If there is no debate, I shall put the question. Shall the motion carry?

Interjection: Recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: The motion does not carry.

We are on page 25b, subsection 56.1(4).

Mr. Jackson: I move that subsection 56.1(4) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by inserting "or a member of the adopted person's family" after "contact or attempt to contact an adopted person."

The Chair: Any debate on the amendment? If there's none, I shall put the question. Shall the motion carry? It's a recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: That does not carry.

We have page 26, Mr. Parsons.

Mr. Parsons: I wish to withdraw page 26.

The Chair: Therefore, shall section 10—debate on section 10?

Mr. Jackson: Yes. I served notice that I wanted to revisit subsection (5), dealing with penalties. Several people wrote to us saying that $50,000 is the maximum and that the minimum penalty by a judge could be $500. I am concerned about this, ever since I had a very unpleasant experience with the Attorney General of this province when a judge took a parking violation for a handicapped person parking space and the judge trivialized this requirement in our law, suggesting that as long as there were other spaces available to the handicapped, he was free to take them. He took a substantial fine and reduced it to a trivial amount. I was quite incensed by that and by the government's failure to do anything about it.

The simple instrument I have at my disposal is from now on to talk about minimum sentences any time I talk about maximum sentences. In fact, we did that with the support of the government because of the Attorney General's failure to respond accordingly to this habit. So, given that this current government has looked at it, I would move an amendment that section 56.1(5) be amended by adding "liable to a fine of not less than $30,000 and not more than $50,000 for an individual, or $250,000 for a corporation."

Let me put it to you another way. We've got two legal opinions that are indicating that—

The Chair: Mr. Jackson, may I suggest that maybe, since you introduced a new motion, the staff take a few minutes to put it together. Then you can debate it when it's back. I understand we need about 10 minutes to do this, so let's have a 10-minute recess.

Mr. Jackson: Mr. Chairman, we should have minimum requirements for corporations, although I've been scanning my mind to determine how a corporation would be involved in this legislation, unless the corporation is the registrar general. Can I suggest for counsel, then, a $30,000 minimum?

The Chair: You can certainly discuss that with the staff. You would tell them what you want, and once the motion comes back, we'll debate that. OK? Ten minutes, please.

The committee recessed from 1630 to 1647.

The Chair: We do have the motion. Mr. Jackson has the floor. You may wish to start by reading it into the record, and we'll go from there.

Mr. Jackson: I move that subsection 56.1(5) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by striking out "to a fine of not more than $50,000 for an individual or $250,000 for a corporation" and substituting:

"(a) in the case of an individual, to a fine of not less than $25,000 and not more than $50,000; and

"(b) in the case of a corporation, to a fine of not less than $125,000 and not more than $250,000."

The Chair: Is there any debate on this amendment?

Mr. Arnott: I guess my question goes initially to the government's motion, because it indicates that there is a maximum fine for a corporation of up to $250,000. I was curious as to under what circumstances a corporation might be in contravention of the act. I can understand how an individual might be, but I'm curious as to how a corporation might be.

Mr. Parsons: I'm trying to think quickly whether there are companies that may say, "We will find your relative for a certain number of dollars," and pursue it.

Ms. Churley: Someone doing the search would.

Mr. Parsons: Right.

Ms. Churley: And would contact on behalf of that person, I'm assuming.

Mr. Parsons: Yes. It could be a company that guarantees, "We will get access," when in fact they don't have the legal right to.

Mr. Arnott: Briefly, I am in support of Mr. Jackson's motion. Certainly in the public discussion of this issue in this bill, the figure of $50,000 has been thrown around as reassurance that there would be a serious repercussion for anyone who ignored the non-contact veto. I wasn't aware that it was a maximum of $50,000. I actually thought it was the minimum. Perhaps I'm remiss and should have known that, but to learn today that it's a maximum of $50,000—in fact, a judge would have a great deal of latitude and perhaps the fine would be as little as $500, perhaps setting a precedent that would influence people to think that this non-contact veto was a joke and feel that it was worth taking the risk because the fine might be as little as $500. Obviously, that's a concern. As my colleague has pointed out, in recent days we've seen the Attorney General talk about the need for minimum sentences for gun crimes because he feels that there needs to be more direction to judges to ensure that these crimes aren't treated lightly.

I think the principle of what Mr. Jackson is proposing, to ensure that there is a very high threshold of minimum fine, is something the government would want to support.

Mr. Parsons: I think I now have a sense of the Conservative Party's plan to deal with the deficit, had they been re-elected.

We do not support a minimum fine, for a number of reasons. I can think back to when the previous government had the zero-tolerance policy for schools, and I watched developmentally handicapped individuals who committed an act that was really beyond their control being dealt with under the same cookie-cutter formula as an individual who willingly made the decision to do it.

This is a serious business to us. We certainly don't want to encourage contact, but I would like to think that we will allow the judges to be independent and have a brain. If an individual is indeed developmentally handicapped and does an action that they don't have total responsibility for, I don't think there is sense in having a $25,000 fine. I can think perhaps of a desperate situation where someone is dying and has chosen to do an action out of desperation, and I can even think of the real possibility of a family or an individual having no money, so what point is a $25,000 fine to a family that is indigent?

We empower our judges to determine guilt or innocence. I believe we need to, at the same time, empower them to make the decision based on the circumstances. From time to time I see decisions made by judges in the paper and I wonder why. But that says to me that every day there are hundreds or thousands of judicial decisions made that are extremely valid. We do not support a minimum fine for this particular case.

Mr. Arnott: The parliamentary assistant seems to be, with his response, underlining why a non-contact veto in many cases will be ineffective. That has been the contention of our caucus and why we've been calling for a disclosure veto, to ensure protection of both parties.

Ms. Churley: I don't support the amendment. There are some jurisdictions that don't even have contact vetoes. Studies have shown the respect that is shown between the parties when there is some contact—one party wants to initiate contact that doesn't happen. In fact, we have the advantage of looking at other jurisdictions that have no contact vetoes and don't have problems or that have contact vetoes and have very few problems.

I think the threshold is very, very high as it is. Anybody looking at that as a maximum would be aware that that indeed could be imposed upon them. But in this kind of situation, were there to be an incident, it would be incredibly important, given the sensitivities of these relationships, that the judge could have some discretion in terms of a fine, and even whether or not there should be a fine imposed, depending on the circumstances. That would take the discretion away in perhaps a very sensitive human situation.

Mr. Jackson: I'm having a hard time listening to the rationale being dropped out on the floor here. Several lawyers, and myself on at least three occasions, have raised the issue of the right of a citizen in this province not to be re-victimized. That is entrenched in our law. That means that a person who has been victimized, a woman in particular in this instance, is not required to go before any other tribunal to prove her pain and suffering. That's in our laws.

Why are minimum standards, minimum fines, so important? Because they don't go to court for that reason. To listen to Ms. Churley and the parliamentary assistant talk about, "Well, we'll trust our judges"—to do what? To listen to how much pain and suffering the individual went through and agonized over having the veto? Again I encourage you to read some of the body of analysis of how the contact veto was working in other jurisdictions. Where it is abused, it has very, very dire circumstances for families.

I can't help but think that there's a certain theme running through this legislation that can only be accounted for under two conditions: that the minister has given such specific and tight marching orders that there's absolutely no deviation whatsoever, or—and this concerns me even more—that the real intent of this legislation is not to provide even the kinds of minimal protections that we're providing. These minimal protections have been voted down with a high degree of regularity by the government members, yet the purpose of them was to provide what little protection we could for those very few people who may feel, for deeply personal reasons, that they need to trigger that portion of the legislation. Minimum fines have the effect of impacting conduct; that is everything we know about them. It's interesting to note that if you don't operate your motor vehicle properly, we have minimum fines, yet on something that can cause such irreparable harm, we're not going to consider having minimum fines.

First of all, we're not even clear on who's actually going to go out there and charge people to do this. Who actually lays the charges here, Mr. Parsons, when someone has broken this law? Who, in your mind, is actually going to police this? Does someone have to file an affidavit with the courts and say, "I've been wronged, and here are the reasons for my wronging"? Are we going to make people pay a court fee to go in after their lives have been disrupted to that extent?

The Chair: Excuse me, Mr. Jackson: It is 5 o'clock. I will recommend that we continue this discussion tomorrow at 9 a.m. Please keep in mind that it's from 9 to 5 tomorrow.

I thank you all for your participation and wish a good evening to all of you, in particular to staff.

The committee adjourned at 1700.

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Mr. Cameron Jackson (Burlington PC)
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Also taking part / Autres participants et participantes
Ms. Marla Krakower, manager, adoptions disclosure project
Ms. Lynn MacDonald, assistant deputy minister, social policy development
Mr. Hari Viswanathan, policy analyst
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