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Thursday 15 September 2005

Journal des débats (Hansard)

Jeudi 15 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
Clerk: Anne Stokes

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

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Thursday 15 September 2005

Jeudi 15 septembre 2005

The committee met at 0905 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, all. I think we can start. We will continue from where we left off yesterday. Mr. Jackson had the floor when we ended the meeting yesterday and I would ask if Mr. Arnott or Mr. Sterling wishes to continue the discussion.

Mr. Ted Arnott (Waterloo–Wellington): Just to refresh the memory of the members, I would again indicate that I am very supportive of the motion that Mr. Jackson has moved. The government has talked about the idea of having a $50,000 fine for people who break the contact veto rule and held this up as a big deterrent that is going to ensure that it won't be broken. At the same time, we know that the $50,000 figure is a maximum fine and there's no minimum fine referenced in the bill. It's my belief that by creating a high threshold of a minimum fine you'd send a very strong signal to people that this is a serious business, and if there is a contact veto in place you don't break it, and if you do, you're going to be paying $25,000 as a fine at a minimum and up to $50,000. So I would again ask the government members to consider what we're trying to say on this and, hopefully, support the motion.

Mr. Norman W. Sterling (Lanark–Carleton): I just have a question of the staff. Your minister has referred very often to New South Wales in Australia, where they have this particular block. How many prosecutions have taken place in New South Wales?

Mr. Hari Viswanathan: Good morning. My name is Hari Viswanathan. I'm a senior policy analyst with the project.

According to the information that we received from the family service office in New South Wales, there have been no prosecutions.

Mr. Sterling: You see? That shows what a farce this whole thing is. The truth of the matter is we're arguing over peanuts here, because there will be no prosecutions. What mother wants to prosecute her natural child because there has been a breach of some kind of non-disclosure thing here? I mean, this is a joke. This whole non-disclosure fallacy that this is some kind of protection for the natural mother or the adoptee is a complete joke.

Here's your minister out there saying that the New South Wales legislation is working, and nobody has had a prosecution. So we have no idea how that legislation is working. All of the people who have been hurt by this kind of legislation are not coming forward.

I support the motion, but this whole section about disclosure is a joke, and it's a shame that the minister has hidden behind this phony protection for either adoptees or natural mothers.

The Chair: Any further debate?

Mr. Ernie Parsons (Prince Edward–Hastings): That was an interesting question, and I guess the follow-up to it is, if I could: There have been no prosecutions, but have there been issues? Has the law been broken? Has that created problems that would cause a need for prosecution?

Mr. Viswanathan: There have apparently been four anecdotal stories of violations, but they were not considered to be serious violations.

I don't know the specifics or the details of the violations. However, in terms of official violations of the no-contact notice as it's written in their law in New South Wales, there haven't been any violations.

Mr. Parsons: So these, I assume then, are four incidents where two parties somehow came together, with one of them apparently not wanting that to have happened.

Mr. Viswanathan: Staff mentioned that they had heard there had been a violation. However, nothing had ever been reported to them, officially.

Mr. Parsons: But is it fair to say that that's happening every day right now, whether in New South Wales or Ontario or the United States or anywhere? Right now there are people seeking out the other one and getting together, perhaps where one didn't want to, without this legislation.

Mr. Viswanathan: There are currently no controls on people in Ontario contacting each other, because, as you're aware, there is no no-contact notice currently in place. So yes, I can probably say that there are definitely

people doing that at the moment in Ontario: contacting each other without a no-contact notice provision in law.

Mr. Parsons: Perhaps you don't have the information, but if we look back historically, are we aware of any instances in Ontario ever where the two parties contacted each other and there were problems of safety or there were—I can't recall ever seeing in the media or on the periphery of social work being aware of it having caused a problem where someone has shown up without. Any awareness of that?

Mr. Viswanathan: I can't actually speak to that issue particularly, because that question has never specifically been asked. I can't speculate. However, from the research that we have done, we haven't come across any, no.

Mr. Parsons: It's certainly my opinion that the no-contact proposal in this bill will improve the present totally unregulated environment that allows anyone to contact anyone.

Mr. Sterling: Of course, that provision doesn't cover the adoptee from contacting children of the natural mother, the husband of the natural mother. It doesn't cover other relatives, it doesn't cover friends, neighbours or anybody else.

The problem with releasing the information is, once it gets into the hands of either one, they are in control of that information. Privacy is about controlling your own information. So what we are doing is taking away the privacy right of either one of the two, and saying, "We, the state, promised you privacy and now we're breaking our word," which is not unusual for this government, quite frankly, in terms of saying, "We told you something before and now we're going to tell you something in the future that's different." But notwithstanding that, I'm going to ask the researcher, have you done any research in this area in terms of the statements you're making? You're making statements here saying nothing's happened, but have you done research? Have you tried to dig out where unhappy reunions have taken place in the province? Have you done any research in New South Wales in this regard? Have you got any specific instances about these contacts that have taken place? Have you?

0910

Mr. Viswanathan: I'm not able to answer that question with respect to Ontario. However, as I stated earlier, with respect to New South Wales, there were those four anecdotal examples that were provided to me. In terms of an official violation of a no-contact notice in New South Wales, there was nothing that happened there that—

Mr. Sterling: Do you have the names of the parties in New South Wales where these unhappy contacts were made?

Mr. Viswanathan: The names of the parties involved in that?

Mr. Sterling: Yes.

Mr. Viswanathan: No. These were anecdotal examples. For example, I spoke to one of the staff at the family service office in New South Wales. She indicated that she had heard there had been an encounter between a birth parent and an adoptee, not necessarily on purpose but by accident, and there had been a no-contact notice in place. However, there was no official record of any sort of particular incident being reported or a request that there be a fine levied in a particular—

Mr. Sterling: OK. Will you give us the details of the person or persons you talked to with regard to these four anecdotal cases in New South Wales? I'd like to talk to those people too about this particular issue. Will you provide that to me in the next week?

Mr. Viswanathan: Certainly.

Mr. Sterling: Thank you very much.

The Chair: You may want to provide it to all three parties.

Any further debate on this?

Mr. Parsons: Just one more comment. I know where you're coming from. I was with you for a long time and I appreciate your sincerity and I appreciate your concerns, because I struggled with this one myself.

If a government were introducing a law that said that everyone from Lanark can't get their birth certificate, or everyone who is blue-eyed can't get information on themselves, we would say it's fundamentally wrong, yet in this province the practice has been that everyone who was not raised with their birth parents can't get their birth certificate. That's the struggle: the rights of one versus the rights of the other.

I appreciate that you couldn't be here yesterday. I'm going to be repetitive, I think, with what I stated yesterday. We have a group of individuals in this province who, under the current practice of all governments, cannot find out information about themselves. If it is important for a person to have the right to protect their information—and I buy what you're saying. There can't be two winners in this. That's the problem. If they have the right to protect the information and everything you're saying is right, then surely the other group should have the right to get their information. That's been my struggle. Which one is more important than the other? That's almost impossible to answer.

Then it struck me that right now, without the legislation, everything we worried about is happening. I was president of a local adoptive parents' association for a time and we met with adoptees who came in and invariably talked about how they went about researching and finding their birth parents. It was easy 20 years ago; the Internet has made it easier. So if we were to walk out of this room and abandon this bill, every birth parent out there who is genuinely concerned and believes there would be problems if their child showed up would still have that same fear. It may not be in the media, but it's still there, except it's unregulated. But there is a higher possibility of their birth child showing up at the door with no legislation than there is with this legislation, because they do it every day.

I'm sure there have been instances in Ontario where appearing at the door has created problems. People are people. But this increases the possibility that the adoptee is aware of the process. It says, "There is a document filed where they don't want to contact me." Norm, you

work with people as much as I do, and most people are good people. Most people, I believe, will honour that. I really believe that. For the ones who won't honour it, if there are any, it doesn't matter what rules exist; it doesn't matter what we put in place. This establishes some order to it, and for that reason, I'm supporting it, because right now it's just wide open.

Mr. Sterling: I can't accept the premise that it's wide open now. If it's wide open now, why do you have the legislation? If the intent of your legislation is to open the records, it doesn't matter whether you open them or you don't open them. In other words, you're saying that by passing this legislation, you're not going to give any access to information or information that can be utilized by either party to contact the others. I mean, that position is very hard to understand.

Mr. Parsons, I understand your sincerity on the issue, and you have a lot of knowledge on this issue because of your background, but the issue for me is one of credibility of us lawmakers and our system and our institution, where we have told people in the past that these records are private. We've told them over and over again that they are private. Now we're breaking our word.

Why should people believe that if they follow the law, they will be protected in the future? I mean, the whole basis of our institution and our legal system is that we, the government, say to the citizens, "If you follow these rules, you will be protected in the future." We will make promises to you about this, promises to you about that. We now have a new health privacy act. How would you feel if the next government or the government thereafter changed the rules all of a sudden with regard to the privacy of our medical records? I don't think we'd like that. So the whole notion that we, as legislators, have the right now to say, "Well, you know, we told you this, but we lied to you"—that's essentially what we're saying. We're saying, "The government basically lied to you before," that they were going to protect their records.

Now, the other part of this and the other notion of this is that I am for more disclosure. I am for more health information passing. But that has been achieved in BC, Alberta and Newfoundland with their legislation in allowing a simple, selective, elective veto by either party, and we know that only 5% of those people have taken it up.

So we're into the general debate here, but I guess my revulsion at this whole no-contact issue—and it was just proved by your ministry staff that it doesn't work in New South Wales, because there hasn't been one prosecution in that state under this act—is that you're not providing any protection at all for either party, and you're pretending to. You're selling this out on the street. Your minister has stated it in news articles and news stories, and it's not true. You're not providing any protection, and that's my revulsion with this particular section of the legislation.

The Chair: Of course, the discussion is on the entire section 10. Ms. Churley, you wanted to participate in the discussion?

Ms. Marilyn Churley (Toronto–Danforth): Yes, I do. I just wanted, because Mr. Sterling wasn't here yesterday, unfortunately—of course, he's heard these arguments before—to respond to some of the things he said.

You know, if you want to throw around legalities, I want you to understand that you're talking not only to a birth mother who went through the process, but also as you, Mr. Sterling, a former Registrar General and very familiar with these issues. Adoption procedures would never promise confidentiality to birth parents, and that's reflected by the absence of reference to confidentiality in the forms that I and other birth mothers signed. That is the reality of the situation.

0920

We went through this yesterday, Mr. Sterling. Some birth mothers were told that by certain social workers. There's no legality to it but, yes, they would have been told that; and some of us were told different things. If you want to say that some people were promised by a social worker and believed that social worker, yes, but in terms of legalities there was never any legal promise that there was confidentiality. It is not reflected anywhere in any documents. On the contrary, the privacy commissioner recently released—I read it into the record yesterday, and I will again. Here it is. I've made this point over and over again, that the issue here besides being a human rights issue and people having the right to know who they are—this is not opening up documents to the entire public; it's between a birth mother, birth parents and the adult adoptee. That is it.

Furthermore, it's been a patchwork quilt of procedures, which you are well aware of. There's such a thing as non-identifying information, which is what helped me find my son. The fact is, my son had my surname in his adoption record and always knew the name. The privacy commissioner was not aware of this, as most people aren't when they talk about the promise of confidentiality, that there never was one.

Furthermore, as the privacy commissioner found out through us actually—I'm putting it on the record—in fact these surnames were placed on the adoption orders. Many, many people, particularly the older people you talk about, I would submit, if their children had wanted to find them, they would have by now.

She put out a great, big 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 ..., the name of the judge and the 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."

She's put out an alert now, retroactively, admitting really that there's never been confidentiality. There are all kinds of ways that thousands of people have been finding each other through this, through knowing the name. And I will tell you why, then, we need this legislation and why we do not want a disclosure veto. There are some people who cannot find each other. We have women in their seventies and eighties desperate to know before they die because, for whatever reasons, through the information that's out there they can't locate each other. It is a human rights issue. If you're going to open up adoption records for a few, why continue to discriminate against a few others?

Let me end by saying this: that retroactive legislation is permitted in many jurisdictions when it is remedial in nature, when it is correcting a wrong, when there's a human rights violation, which is the issue here. What we are doing is not unheard of. It's been done in some aboriginal cases and it's been done in other cases where it's very clear that there have been human rights violations in the law, and what you do to correct wrongs to people is fix that legislation retroactively.

This is about human rights and making sure that people have the right, once they become adults, to their own personal information, which we all take for granted, let alone whether or not people can get it.

I would say that if 99.9% of people, by spending money, were able to access information that is rightfully theirs anyway, as most people are having to do now—they're hiring people; they're going over the Internet; they're doing whatever they can to find each other. But it's still a human right, and they still should have access to their own information.

The bottom line as well is that there are some people who can't afford to hire a private detective or a firm that does this kind of work to do the searches for them, or their situation was such that there are periods of time within the patchwork of the processes where there were numbers attached—can you believe it?—to a few for a couple of years instead of identifying names. That is why we need this legislation.

England opened up its legislation, for heaven's sake, in the 1970s. Jurisdictions, scores of them across the world, have done this, Norm, without these dire consequences that you're putting on the table. Read the research. Look at what happened in England, Scotland and Wales. Australia had a disclosure veto as well as a contact veto, and they've just now decided to take the disclosure veto off because they don't need it. The research is there. It's been done in Scotland since the 1930s, I believe. We are only doing what other jurisdictions have done and are way ahead of us. Some jurisdictions don't even have contact vetoes and it's working.

That's the reason this legislation is necessary and it's why I have been fighting, with thousands and thousands in the adoption community at all three levels—adoptive parents, adoptees and birth parents; this is why we've been fighting for years and years to open up these records to the individuals who own the records, not to anybody else.

Mr. Sterling: I must respond, of course, and I don't speak only as a former registrar; I speak as a former Attorney General, understanding what legal obligations are. Legal obligations are not only incurred in statute and regulation but in contract, in policy and in a lot of other ways by the government of Ontario, as represented by their employees or transfer agents etc.

We can have an argument about the legality of a promise or not a promise. I think that is, quite frankly, not germane to the situation—

Interjection.

Mr. Sterling: Well, there is a legal promise; there's no question of that in my own mind. Why is there a sealed record?

Notwithstanding that, we are not representing the majority. We understand that the majority wants open disclosure, and we're for that. We understand that all want disclosure of health information.

We are fighting for the minority, the small number of individuals who are going to be substantially hurt by the disclosure, people who are going to be contacted and injured, either in an emotional or some other way. We have said before as governments, "You can rely on us. We're going to seal these records in an envelope and you can rely on us. Give up your baby for adoption. Act in a certain way with regard to your future actions."

We are fighting for that minority, those small numbers of people who feel that this is a tremendous invasion of their privacy, be it an adoptee—I heard from one yesterday, not in my riding but down around Stratford, who said to me, "I have no specific reason for disallowing the disclosure of my record, but I want to make that decision myself. As an adoptee, I am happy in my particular situation and think that opening the records will do nothing to enhance myself or my natural parents." So she just wants that particular choice of her own volition. She doesn't want the government to break the word that she thinks they gave to her natural mother.

We are fighting for a minority of people here who could suffer grievous damage by the disclosure of this information. I want to make that very, very clear, that our party and I would wholeheartedly agree with the BC and the Alberta legislation, which has been very successful. Only 5%, the minority that we're representing, have stood up and said, "I want to protect the information, as promised."

0930

Mr. Parsons: I wish I had a better way with words than I do, because I've struggled with this one. I'm starting to find the right words. I'm going to try to describe the path that I went down to get to where I am now. I find this one of the more emotional bills this Legislature has dealt with in my time because of the impact I know it's going to have on individuals in the province. I know we all share that.

When we adopted our first child—after six months one goes to court and the adoption probation has ended

and they become legally your child—we were quite frankly very surprised at the time when they gave us a page out of a birth registry for the hospital. The names were changed so that it appeared that my wife, Linda, and I were the birth parents. We didn't see that coming. We were quite amazed by that. I'll admit our first reaction was, "This is kind of neat. This really, really makes our daughter our daughter because we're on the birth registry at the hospital." But I drove home and I thought, that's kind of fraudulent. It looked like my wife gave birth to our daughter—and she's our daughter—but that intrigued me. I thought, why are we doing this, why is this being done? But we were told to fill out the form and, were someone to go to the hospital, it appeared that Linda and I had had a baby daughter on that day.

Even at that stage, that didn't seem right. It just didn't seem right to us because, I thought, this is almost geared as if we're supposed to not tell anybody she's adopted. We're supposed to pretend that we gave birth, and that wasn't right either. We made no secret of how lucky we were. We had the privilege a lot of parents don't: We got to pick our children, and we picked some pretty good ones. So that was wrong right there. It was legal, but morally it wasn't quite right.

I'm not a great researcher, but I have been unable to find any evidence that any government, whether it be Liberal, Conservative or New Democratic Party, had legislation or regulation that said that birth mothers were entitled to protection of their name. I can't find anything that said that that promise could be made or was an option or must be made or whatever.

Adoption has changed in children's aid societies. I saw a marked difference in the 25 years that I was there. Do I believe that some birth mothers were promised that their names would never be disclosed? I absolutely believe that happened—no doubt in my mind that that happened. But in the children's aid society that I was proud to be a member of, there was never any policy. There was never anything on paper saying that that promise could be made.

It doesn't matter whether it's children's aid or any other organization, whether it be public or private, the employees are trying to do what they believe is in the best interest, and sometimes they say the right words that will bring comfort to a person but not having any legal authority to say that. And I don't believe there was ever legal authority to say that.

Suppose there was—and I'm quite convinced there wasn't—legal authority to promise that birth mother that her information would never be disclosed. That means that that birth mother has had the right to trade away the rights of her child, because if you accept the one, that the birth mother has the right to privacy, then you have to accept at the same time that the child has lost their rights to their information. I don't believe anyone, whether it be a parent or a next-door neighbour or a stranger, has the right to trade away my rights or another person's rights. If it were law, I would still have to say, no, that other person has full rights, the same as every other person in Ontario. Whether they're adopted or not adopted, they retain the right to know about themselves.

When I factor in that there wasn't any legal basis for the promise, then it just becomes that much clearer to me that the adoptees must not be treated as second-class citizens. If we accept, as some jurisdictions have, "The new rules start today, so everyone who is part of an adoption process from now on has to agree to full disclosure," then we've got two tiers: Those adopted before 2005 have no rights; those adopted after, do. That's not acceptable to me personally, to our government or to the people of Ontario.

I think, Mr. Sterling, as an engineer you share my love. I love the fact that two plus two is four. It's not nearly four, it's not 3.999; it's four. I wish everything in our lives was nice and simple and clear: "Here it is. We've done this," and there are no other problems. But it isn't. So I have chosen, and I'm proud that our government has chosen, to say that we will not have second-class people in Ontario who cannot access information about themselves, and that's all they want—about themselves. We're opening the door to let them into a room where they already live; they just haven't been allowed into that room. I believe this bill accomplishes that.

I will reiterate that at the present moment there is absolutely nothing to prevent that child showing up at the door, because they don't get any support out of the government. They don't get any information. They have to do it by word of mouth; they have to do it by groups that meet informally; they have to do it by word on the street; they have to do it by people who say, "For X dollars, I will find your birth mother." That's not right. Some people don't have X dollars, but they're still entitled to that information. This provides an equality and a fairness to it that is far better than this present system.

Mr. Sterling: I just have one question, Mr. Parsons. Why do we have disclosure legislation now? Thousands and thousands of people have gone through the disclosure process that we do have now in the government and have had for some period of time. There is a piece of legislation. Why do we have sealed records if there is no legal obligation to keep this record private? There is a legal obligation on the government to keep this record private. If there wasn't, your minister could say to your bureaucrats, "Release the records." End of story. We wouldn't need this legislation; we wouldn't have this debate. There is a legal obligation on the government to keep its word that we have promised these people.

Some people are going to be hurt. We'll never hear from them, because they will be in the background. The research that's been done in New South Wales doesn't try to dig out those people. They go to the happy people: 95% of the people will be happy; 5% will not be happy. The whole notion that there isn't going to be a lot of harm on a minority of these people is a fallacy. Why wouldn't you want to protect them? Why wouldn't you want to do what BC, Alberta and Newfoundland have done? You can get away from a lot of this gobbledygook in this legislation, which is a dog's breakfast in terms of a

piece of legislation, because you've been changing your policy as we've gone through this. Why wouldn't you go back to a simple test and just say to the person, "Do you want to block or don't you want to block?" and then come back in 10 years if 50% of the people block. But if only 3%, 4% or 5% block, you've probably achieved your goal and protected the minority. I don't understand your philosophy and your abandonment of your promise. It's so important for our institution, for Parliament, for the government to be able to say to people, "Follow the law, follow the rules, and you will be OK. You're a good citizen." What we're doing here—uh-uh.

0940

The Chair: Any further debate? If there is none, I will now put the question. It will be a recorded vote. We are voting on 26a, which is the latest amendment that Mr. Jackson put yesterday.

Ayes

Arnott, Sterling.

Nays

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

The Chair: This amendment does not carry.

What's left is to deal with section 10. Shall section 10 carry?

Ayes

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

Nays

Arnott, Sterling.

The Chair: The section carries.

Now we go back to what we stood down yesterday: section 9.1, page 24. We had the motion on the floor; we just stood it down. It's a government motion. Is there any further debate on that motion introduced yesterday?

Mr. Arnott: I'm sorry, Mr. Chair. Which one is that?

The Chair: It's page 24, section 48.6, on section 9.1 of the bill.

Mr. Arnott: I move that section 48.6 of the Vital Statistics Act, as set out in government motion 24, be amended by striking out "The Lieutenant Governor in Council shall ensure that a review" and substituting "The assembly shall ensure that a public review".

The Chair: That's an amendment to the amendment. Any debate?

Mr. Arnott: This follows on the discussion that we had yesterday and the statements that Mr. Jackson and I made. There needs to be a public review process after five years, not a private administrative review that doesn't involve any public input and that may very well lack accountability and certainly will lack transparency. So we've suggested that a committee of the Legislature should be charged with the responsibility of doing the public review after five years and that a report be made to the Legislative Assembly after the review is completed.

Mr. Sterling: The section, as it stands, only means that the cabinet of Ontario decides how a review is going to take place. It doesn't say that it's going to be in the open. It could be that somebody writes a report—that's the review, slam dunk, done—and nobody in the public has any participation in it. So I support very strongly this amendment.

The Chair: Is there any further debate on this amendment?

Mr. Parsons: Certainly, the intention of the original amendment, which has now been amended, was that this is a review intended to determine the operational difficulties. This is a fairly complex change. We're shifting responsibility from one ministry to another, from one area to another, establishing a new group. The Legislature can at any time undertake a review of anything. It doesn't need this amendment to make that happen. This is dealing with the mechanical issues. If there are philosophical problems with the change in legislation, the Legislature is perfectly free to undertake a review.

I will not be supporting the amendment. The amendment introduced by our government is to do an operational review, not a philosophical review.

Mr. Sterling: So there's no intention of asking people after five years whether this thing has worked or failed or injured people, this minority group that I'm talking about. There's no intention of asking them whether or not we should have done this or shouldn't have done this. Is that correct?

Mr. Parsons: You've been in public life for some time. You don't need to ask people if there's a problem; they will come forward with it. If very clearly there are problems identified that are beyond the operational, I have no doubt in my mind that it would be reviewed and acted upon.

Mr. Sterling: We have had in legislation before the requirement that the Legislative Assembly review a piece of legislation after a given period of time in order to ensure that it's working or not working and if there are ways to improve it. When we're taking such a radical departure from the existing state of matters, do you not think that it would be most prudent to have such a clause?

You say that the Legislative Assembly can do what it wants, but it only does what the majority wants, the governing body of the day. The legislators in the opposition don't get the choice of having that, and that's where the people who might object to this legislation go to. They go to the opposition and say to the opposition: "This is not working. Can you do something about it?" Unless it's in this legislation, it won't happen.

The Chair: Is there any further debate? If there is none, I will put the question. We are dealing with the amendment to the amendment. Shall the amendment to the amendment carry?

Ayes

Arnott, Sterling.

Nays

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

The Chair: The amendment to the amendment does not carry, so we go back to the original amendment. Is there any further debate on that amendment? If there's none, I will put the question. Shall the amendment carry? Those in favour?

Ayes

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

The Chair: None opposed. The amendment carries.

We are going to move to page 27, Mr. Parsons.

Mr. Parsons: Motion number 27: I move that subsection 11(2) of the bill be struck out and the following substituted:

"(2) Section 60 of the act is amended by adding the following clauses:

"(r) prescribing persons for the purposes of the definition of 'birth parent' in section 1;

"(r.1) governing the matters provided for by sections 48.4 to 48.4.3, including a determination of whether an adopted person is incapable;

"(r.2) governing what constitutes abuse for the purposes of section 48.4.4, governing the criteria and information to be used to determine whether an adopted person was a victim of abuse by a birth parent and governing the manner in which the determination is made."

The Chair: Is there any debate on the amendment?

Mr. Sterling: Could somebody explain what this change is about?

The Chair: Mr. Parsons, would you mind?

Mr. Parsons: This amendment deals with a number of issues. One is that it will provide a definition of who a birth parent is. As technology changes, there is a possibility that the definition of "birth parent" will have to change with it. There needs to be a definition or mechanism to determine if an adopted person is incapable. Lastly, we need to determine the process for a prohibiting order where there has been a history of abuse.

Mr. Arnott: Did this amendment arise from the public hearings? Where did it come from? From the response of interested people?

Ms. Marla Krakower: Because it deals with an adopted person who was a victim of abuse, the last, (r.2), did. The earlier one, (r.1), was, I believe, in the bill already, so there was already a section like this. The amendment is really dealing more with adding (r.2), which is dealing with that particular amendment, which already carried at committee and has to do with an automatic prohibition being put on in terms of a birth parent receiving information when he or she was involved in abusing the adoptee.

0950

The Chair: Any further debate?

Mr. Sterling: Just a question. In terms of (r.2), the child may or may not know by the time they reach the age of 18 or 19 whether or not they've been abused by the birth parents. Who would kick in the process to prevent the disclosure to the abusive parent?

Ms. Krakower: Whenever a birth parent applies to the ORG for the identifying information, automatically that person will have to wait until the children's aid society has an opportunity to check into the files to determine whether there was abuse involved. That birth parent would not be able to access the identifying information until it could be determined that he or she was not involved in abusing the adoptee.

Mr. Sterling: Who does the inquiry? Is it the adoptive parent?

Ms. Krakower: What will happen is that when the birth parent goes forward to the Office of the Registrar General, the ORG will then ask the custodian of adoption information to do a check to see from which children's aid society the person was adopted; or in the case of a private adoption, this wouldn't apply. That information would be conveyed back to the ORG and the birth parent would be permitted to access the information. If the person was adopted from a children's aid society, the custodian would then ask the CAS that was involved to do a check through their files and determine, based on what was documented in the file, whether there has been abuse. That information will be conveyed back to the custodian, who will then inform the ORG to either go ahead and release the information because there was no abuse, or not, in instances where there has been abuse.

Mr. Sterling: Is there any certainty to it at all? I had another constituent, not from the area that I represent but from another area, talk to me about the fact that they had adopted a child where the parents had been criminally charged and found guilty of abuse. Is there an absolute block on those parents getting those records, ad infinitum?

Ms. Krakower: What is available to a birth parent if he or she is prohibited from accessing the information because there is a finding of abuse, and if that person feels that it's unfair and that they were not involved in abuse, is that the birth parent will have an opportunity to appeal to the Child and Family Services Review Board to indicate that he or she feels that that finding is not correct.

Mr. Sterling: So even if they were charged criminally and found guilty in our courts of abuse, they still could possibly get the record.

Ms. Krakower: I'm just indicating that they have an opportunity to appeal a finding. Likely, if there's a criminal finding of abuse, my assumption would be that even if they did appeal to the CFSRB, the CFSRB would uphold the findings of the CAS, particularly in a case where, as you mentioned, it's something that was a

criminal finding and it's clearly documented. I think that's an instance where that would be upheld.

Mr. Sterling: Well, I don't think it's good enough. I think there should be an absolute block, if there was a criminal prosecution, and that we shouldn't leave it up to a board to make that decision. I think that then the child should have the option.

The Chair: Any further questions or debate? If there is none, we'll put the question. Shall the amendment carry? Those in favour?

Ayes

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

Nays

Arnott, Sterling.

The Chair: The amendment carries.

Page 28. Mr. Parsons?

Mr. Parsons: I move that subsections 60(2) and (3) of the Vital Statistics Act, as set out in subsection 11(4) of the bill, be amended,

(a) by striking out "clause (1)(r)" wherever it appears and substituting in each case "clause (1)(r.1)"; and

(b) by striking out "section 48.4" wherever it appears and substituting in each case "section 48.4 or 48.4.3."

The Chair: Any questions?

Mr. Parsons: It's a technical amendment that reflects the new numbering for some of the earlier amendments.

The Chair: If there are no questions, I will ask, shall the motion carry?

Ayes

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

The Chair: The amendment carries.

Shall section 11, as amended, carry?

Ayes

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

Nays

Arnott, Sterling.

The Chair: The section carries.

Shall sections 12 and 13 carry? Any debate? If not, I'll take a vote.

Ayes

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

Nays

Arnott, Sterling.

The Chair: Both sections 12 and 13 carry.

Section 14, page 29. Ms. Churley, please.

Ms. Churley: I move that section 162.1 of the Child and Family Services Act, as set out in section 14 of the bill, be amended by adding the following subsection after subsection 162.1(2):

"Training, etc.

"(3) A person who is designated under subsection (1) must satisfy such criteria as may be prescribed, including criteria relating to the person's training and experience."

The purpose of this is to ensure that search agencies meet regulated standards so that they're not price gouging or mishandling private information and that they have the expertise to do the job. The government has a similar amendment that follows this one, but as I understand, yours includes the possibility that the government will assign a designated agency to handle searches on the government's behalf. Of course, I maintain that we have the ADR, and why create a new infrastructure when one already exists? But if that is the direction we're going, where it's essentially privatized, then we have to ensure that these agencies meet very, very tough regulated standards, and there's no guarantee of that within the existing legislation.

The Chair: Any questions or debate? If there are none, I will put the question. Shall the amendment carry?

Ayes

Churley.

Nays

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: The amendment does not carry.

Page 30. Mr. Parsons.

1000

Mr. Parsons: I move that section 162.1 of the Child and Family Services Act, as set out in section 14 of the bill, be amended by adding the following subsections after subsection 162.1(2):

"Same, disclosure of information

"(3) A designated custodian may exercise such other powers and shall perform such other duties as may be prescribed for a purpose relating to the disclosure of information that relates to adoptions, including performing searches upon request for such persons, and in such circumstances, as may be prescribed.

"Same, Vital Statistics Act, s. 48.4.4

"(4) One or more designated custodians who are specified by regulation may exercise such powers and shall perform such duties under section 48.4.4 of the Vital Statistics Act as may be prescribed in such circumstances as may be prescribed.

"Agreements

"(5) The minister may enter into agreements with designated custodians concerning their powers and duties under this section and the agreements may provide for payments to be made to the designated custodians."

The Chair: Any questions or debate on the amendment? If there are none, then I'll put the question. Oh, sorry. Mr. Arnott.

Mr. Arnott: Could we have an explanation for the amendment?

The Chair: Of course. Mr. Parsons.

Mr. Parsons: This amendment provides for the circumstances to be accommodated where we believe searches need to be undertaken. If we have individuals who are adopted in this province where there's a serious health issue—although it is not possible for a search to be undertaken for each and every one, where there is a vital health matter, this will allow the custodian to undertake a search to find that other individual and make them aware.

There may be cases, perhaps, where a birth parent's family has Huntington's disease in it, for example, and it would be in the best interest of the adoptee to be aware of their medical background. So although there may not be an urgent matter such as a need for a transplant, there may be a need to make them aware that they may want to consider testing to see if they in fact are going to suffer from that. This amendment allows them to undertake the search where necessary.

This is also complementary to protecting adult adoptees who were abused by their birth parents; that's one of the reasons for the amendment before us.

I wish I had the memory that I used to have, but I believe that's it. I used to criticize my father for his short memory, and I understand totally now.

Mr. Sterling: It pays to remember that.

Mr. Parsons: That's the rationale for the amendment.

The Chair: Thank you. Any more questions, Mr. Arnott? Any further debate on the amendment? If none, I shall put the question. Shall the amendment carry?

Ayes

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

The Chair: The amendment carries.

Page 31. Ms. Churley.

Ms. Churley: I move that section 14 of the bill be amended by adding the following section to the Child and Family Services Act after section 162.3:

"Duty to maintain records

"162.3.1 Every designated custodian, society, licensee and other person who participates in arranging adoptions or who creates records relating to adoptions shall maintain their adoption-related records for at least 100 years after the placement of the adopted person."

This amendment deals with the fact that currently there is no legislative provision that requires adoption files to be maintained for a reasonable number of years, thus allowing adult adoptees and birth parents to gain access to the files or information contained within them, information that would be critical for effective searching.

Of course, it also provides a mechanism to collect, on an ongoing basis, critical information about the birth family's medical and genetic history that can be passed on to an adoptee. This is actually dealing with the fact that there is no provision for that. It's absolutely critical, especially with the dismantling of the existing system, which, as you know, I really object to, but my amendment failed on that. However, I think this is really critical, that there is something in legislation that clarifies that those records have to be kept by a custodian or whoever else is dealing with the adoption process.

Mr. Arnott: Right now, as far as you know, there is no requirement on the part of children's aid societies to keep records indefinitely.

Ms. Churley: No, as far as I know. The staff may respond to this. Certainly, they have been keeping the records, but now with the change of the system and the dismantling of part of the existing system, we need to really be sure, because we're not quite sure how regulations still have to be met. You talk about custodians. There's a whole bunch of changes that's going to happen. We need to be assured that whoever is carrying on with some of the work will be safeguarding those records. Can you respond?

Mr. Parsons: The Child and Family Services Act now requires that the records be kept permanently, which is interpreted to be forever. This would actually limit it to 100 years.

Ms. Churley: You could amend it if you like.

Mr. Parsons: I think I'll amend by voting against it.

Ms. Churley: But what will happen if this amendment isn't passed? With the changes in the legislation, there will be no guarantee any more that records—

Mr. Parsons: Children's aid societies will continue to keep their files on the adoptions. They're required to keep them forever. There are private adoption services in this province, and they are required to keep them forever, and if they cease business, as they do from time to time, they're required to transfer them to the ministry, and they are then kept.

Given the reality of people and circumstances, and genealogy searches, we're comfortable with the "forever" rather than "100 years."

Ms. Churley: I'm not just talking about children's aid here. It says: "Every designated custodian, society, licensee and other person who participates in arranging adoptions or who creates records relating to adoptions shall maintain" those records. The concern is that, because the adoption agency is going to be dismantled and they, of course, keep records as well, we have no guarantee that anybody else who takes over that service is going to be keeping records. That's what this is all about, not the children's aid society.

Mr. Parsons: We can require children's aid societies, when you require a ministry to keep records.

Ms. Churley: Yes, and that's fine.

Mr. Parsons: But for licensees, the reality is it's impossible to order them to keep them for—

Ms. Churley: No, it's not. If we make the law such that whoever is doing the work on behalf of the government is required to keep—because you are going to stop

conducting searches. That's one of the issues that we as well as the Conservatives talked about, and I had an amendment. It's a serious problem in this piece of legislation that the so-called non-identifying information, the kind of information that is actually conducted now and held—not the CAS records, not the ones locked away, but the records that are kept by the adoption disclosure register, the ADR—is going to be dismantled. That's what I'm talking about.

You're talking vaguely about a custodian. That has to be worked out, and I had an amendment too. Whoever's going to be conducting those searches that that agency of the government conducts is going to be gone. So there's going to be some other body doing those on behalf of the government or privately or whatever, charging a fee. I wanted them to be regulated. That was voted down. But we need to have some assurance, now that the government won't be doing it any more, that they will be obliged to be regulated in such a way that they keep records. Otherwise, we're going to have quite a mess on our hands.

Mr. Parsons: Private adoptions take place now. Some are done through lawyers. Mr. Sterling would know better, but I suspect there's a requirement that their records be maintained if they go out of business. I don't know for sure.

There are also individuals. I know of a number of former children's aid society workers who now do private adoptions. You can go and have a home study done. You can adopt through them. They're not going to keep their records for 100 years right now. When they go out of business or when they die or when they leave the country, this would require them to keep them for 100 years. It just ain't going to happen.

The current legislation says that if they go out of business they must transfer their files to the ministry. We're comfortable with that. We want them to transfer it.

1010

Mr. Sterling: I have some sympathy with the intent of the amendment. I'm not sure that the amendment reaches the goal. How would you know who all the retainers of the records are? Perhaps we could ask some of the staff what happens now when there is a private adoption. Let's say a lawyer does a private adoption: What are the registration requirements now, and are they going to change under this legislation?

Ms. Lynn MacDonald: I think this is a multi-part question, if I may, Mr. Sterling.

Section 71 of the CFSA would still apply in requiring children's aid societies to retain records permanently. The CFSA also requires licensees conducting private adoptions to retain records permanently or transfer those records to the ministry.

Government schedules—I'm not going to use the proper technical jargon here—under the Archives Act require us to keep our records for a minimum of 100 years already. In the case of the custodian, which is intended to be either a government agency or part of a ministry, they would be governed by the archival records schedules as well.

I'm hoping my legal counsel won't have to correct me on that.

Ms. Kathleen O. Wynne (Don Valley West): Could I ask for a 10-minute recess, please.

Ms. Churley: Yes. I think you'll want to look into this. Can I tell you why I put this amendment forward? I'm happy to have the recess to look into it. This was brought forward by those in the adoption community who have looked at this bill very carefully. They flagged this to be a very serious concern, in their view. I think it would be most appropriate to look into it a little further.

We can hold it down, if you like.

The Chair: Is there consent for a 10-minute recess? I think staff may also need a few minutes. There is.

The committee recessed from 1015 to 1025.

The Chair: Ms. Churley, the floor is yours, please.

Ms. Churley: After some deliberation over the recess, I would ask that we stand this down until this afternoon.

The Chair: Is there consent for standing down? There is, so this item is stood down.

We'll go to the next one, page 32. Mr. Sterling or Mr. Arnott?

Mr. Arnott: I move that section 14 of the bill be amended by adding the following section to the Child and Family Services Act after section 162.4:

"Counselling

"162.5 The minister shall ensure that counselling is made available to adopted persons and birth parents who may receive information that relates to an adoption or are concerned that they may be affected by the disclosure of such information and who cannot otherwise afford counselling."

Mr. Sterling: This amendment is put there sort of following on our present disclosure procedure whereby counselling, as I understand it, is provided to willing people who are trying to reconnect, to make that reconnection as successful as possible. This would not only cover that situation, but it would also allow someone who was perhaps fearful of a contact to seek counselling if they couldn't afford that counselling. For instance, if the woman who had written to the privacy commissioner who had been raped some 40 years ago wanted to receive counselling because she feared very much the contact by the adoptee if the record was open she would be able to receive some counselling if she couldn't afford that kind of counselling.

I think it's a very positive motion that would assist people, particularly those minorities which I talked about before who are receiving or hearing of this legislation with great trepidation.

Mr. Parsons: The current legislation provides for counselling, but I'm not sure it's what we would consider to be counselling. It's really been kind of an outreach service that helps the two parties get together.

The requirement or sense that there must be counselling is pretty paternalistic. The question really is, should there be counselling? Should a person be able to

avail themselves of counselling? Of course. There's nothing to ever prevent a person seeking counselling. I'm sure that for a birth parent or an adoptee the entire path they're following to pursue a reunion or contact or obtain information has got to be pretty emotional. It is certainly the intention that for a party who believes they would benefit from counselling, referrals will be made to local community agencies where they can avail themselves of counselling services.

We don't believe this amendment is required.

The Chair: Mr. Sterling, may I recognize Ms. Churley and then—

Mr. Sterling: Can I just ask a question? Where is the assurance that somebody who can't afford to pay for counselling will get counselling? Is that in this legislation somewhere else?

Mr. Parsons: The issue of counselling in this province goes far beyond adoption. There's the whole question of who pays for counselling for any number of issues in one's life. There are community agencies in each and every part of Ontario that can provide access to counselling for those unable to afford it.

The Chair: Thank you. Ms. Churley.

Ms. Churley: I wanted to clarify. I have an amendment coming up after yours, and the difference I think is that the existing legislation has mandatory counselling. For instance, if I hadn't found my son on my own and we had gone through a process at the ADR, we would have had to. We would have had counselling forced on us, which is ridiculous because neither of us needed that kind of counselling. So I'm agreeing that that should go, but we believe there should be counselling made available which should be optional and no longer mandatory, but if somebody needs counselling, that it's made available to them.

What I'm trying to understand, Mr. Sterling—I believe yours is saying that it should be made available. I think you're saying it should still be mandatory, whereas my motion coming up, the next amendment, says that there should be optional counselling, that it should be there and provided for those who actually need it but it shouldn't be mandatory.

1030

Mr. Sterling: I would argue that mine doesn't make it mandatory; it says "available." But I think that this motion perhaps is wider than yours in that it also offers it to people who are not receiving information. In other words, if somebody is just very concerned that a knock is going to come on the door and they want to talk to somebody about what to do if the knock comes on the door, they can go and seek this kind of counselling. I don't think your amendment includes that. You talk about people who receive identifying information.

I would say that the kind of counselling that would be required here would not necessarily be the kind of counselling that would be needed in a generic sense, as Mr. Parsons has put forward, so that the people who would be involved in this might have greater skill in this area: knowing the law, knowing what the rights are, knowing what to do and those kinds of things. I think there's a slight difference in the two amendments.

Ms. Churley: Yes, I see what you're saying, and that's a fairly major difference, because you're suggesting that because the law is going to change if this is passed, there may be people who become concerned and would want counselling just in case something happened.

Mr. Sterling: That's right.

Ms. Churley: I think that I couldn't support that, because I see all the time now where, without this legislation, people are connecting or not connecting and finding each other and forming relationships or not forming relationships outside of the government structure, and some get counselling and some don't. But to suggest that there's going to be a huge difference in people's lives—I think if the education is done properly people will realize that the likelihood of a knock on their door is, perhaps, with a contact veto less likely than it is now.

By the way, Mr. Parsons, I should tell you that there are very few knocks on the door even with the existing legislation, from all the evidence that we have, because of the respect people have for each other. When they do locate each other, if there is to be a relationship, they want it to work. That's an aside that I wanted to put on the record. Even with no contact vetoes right now and a lot of people finding each other privately, they're not doing that, which is interesting in itself. But there's no counselling made available to all of those people who are finding each other now. I just don't know how you could make that work.

Mr. Sterling: I think the example that the privacy commissioner brought forward about the woman who said she was thinking of suicide as a result of this change in legislation—she should be given counselling, and should be given specialized counselling in terms of this particular issue. I don't understand your reluctance to give her that kind of counselling. I just don't understand that.

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

Ayes

Arnott, Sterling.

Nays

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

The Chair: The amendment does not carry.

Since we stood down page 31, we will come back to section 14. We'll move into section 15, page 33.

Ms. Churley: I move that subsections 15(1) to (7) of the bill be struck out and the following substituted:

"(1) Subsection 163(2) of the act is repealed and the following substituted:

"Duties

"(2) The registrar shall,

"(a) ensure that counselling is provided to persons who receive identifying information from the registrar;

"(b) ensure that counselling is made available to persons who receive non-identifying information from the registrar or to persons who are concerned that they may be affected by the disclosure of identifying information;

"(c) have searches conducted in accordance with sections 168 and 169."

Mr. Sterling, after everything I just said, I believe my amendment actually does deal with what you said. If you look at (b), "receive non-identifying information from the registrar or to persons who are concerned that they may be affected by the disclosure of identifying information," so, in fact, after everything I said, it's there.

Interjection.

Ms. Churley: I'm not sure that yours isn't clear enough in that it's not mandatory, but this one provides that it be offered if needed.

Mr. Sterling: What does "have searches conducted in accordance with sections 168 and 169" mean?

Ms. Churley: I would have to look at the bill again now to see, because it's been a while. You can either stand it down or give me a moment to look at that.

Mr. Sterling: Can you help us out? Do you know what it would mean?

Ms. Krakower: It's sections 20 and 21, and it has to—

Ms. Churley: So it's sections 168 and 169, right?

Ms. Krakower: That's right.

Ms. Churley: It's (c) of the—

Ms. Krakower: And they have to do with repealing sections of the act.

Ms. Churley: Pardon?

Ms. Krakower: The plain language: The disclosure of identifying information or non-identifying information by the registrar for health, safety and welfare purposes is repealed and the duty of the registrar to search on behalf of an adopted person for a birth relative is repealed in those sections.

Ms. Churley: So have searches conducted in accordance with sections 168 and 169.

Mr. Sterling: Does that make sense?

Ms. Krakower: You're proposing to reinstate the search.

Ms. Churley: OK, I'm proposing to reinstate those sections. It's been a while since we've done this bill. The summer's gone by and I've forgotten certain parts.

Mr. Sterling: What additional duties would the registrar have, then?

Ms. Churley: I can't find my bill again so I can specifically go to that section.

The Chair: Could staff be useful or helpful?

Ms. Churley: No, not at the moment.

Can staff help with this, please, while I'm trying to find exactly the reference? Surely you know what I mean here.

The Chair: Is the floor still with you, Ms. Churley?

Ms. Churley: The floor is still with me, yes. People have an option of giving me a moment or moving on to the next one and coming back to it.

The Chair: OK. Does anybody wish to make any comments in the meantime so that we don't have to—

Ms. Churley: I'm having a little trouble here reminding myself.

Mr. Parsons: My poor memory is contagious, evidently.

Ms. Churley: Well, it has been the summer. We were hoping to have this passed months ago.

Mr. Parsons: You don't know how sympathetic I am.

The Chair: All right, we'll just wait. It's OK.

Ms. Krakower: I believe that in your amendment you're asking the registrar to continue, and also to continue the searches that the registrar would facilitate, as they do now under the current adoption disclosure unit.

Ms. Churley: Yes. I now have it in front of me. Thank you to staff here.

Mr. Sterling: Does it make sense, in that it sort of refers to the old regime?

1040

Ms. Krakower: An amendment was already passed that deals with giving authority to the custodian to conduct searches. Under the new legislation, if the bill is passed, the custodian would be able to conduct searches, and regulation would define those types of searches. In effect, the search piece that is referred to in Ms. Churley's amendment has already been covered off by a government amendment that's already been discussed here and passed.

Ms. Churley: You mean, in terms of the custodian, which is not quite the same thing as the existing—OK. What we've got here is the registrar. If you look at 168 and 169, what I mean by "have searches conducted in accordance with sections 168 and 169" is the sections that read, "The registrar may disclose identifying or non-identifying information that relates to an adoption to any person if, in the registrar's opinion, the health, safety or welfare of that person or of any other person requires the disclosure.

"(2) Subsection (1) applies whether the adoption order was made in Ontario or elsewhere.

"(3) A person who receives information under this section in the course of...."

So what it does is define basically who counselling should be made to under those sections. These describe the different circumstances under which searches are conducted. The registrar shall ensure that counselling is provided upon request following the procedure under these sections. It is defining, without writing it all out here, who would have access to that counselling.

Mr. Sterling: My problem is that these sections are a page in length, and I'm not certain that they fit within all of the rest of the context of this legislation we're dealing with here. You have ages like 18 years. I don't know. Does that fit in context with everything else?

Ms. Krakower: Certainly, under this bill, there would be no more registrar, so that would be overtaken.

Mr. Sterling: Ms. Churley, we could support your (2)(a) and (b), but (c) I don't think is possible to put into—

Ms. Churley: These amendments were written by legal. Talking from memory again, I can't quite remember back when we discussed these amendments and I asked legal counsel. There clearly must have been, I would assume, a legal reason why we would have had to add this part, and it did pass the legal test. So I'm a little confused, then, as to why staff here are saying that it's already been covered off and why it's in this amendment.

Ms. MacDonald: I think, Ms. Churley, that at the time you crafted your amendments, it may have been before we looked at the notion of the custodian doing a search. I think that's where the conflict arose. It was in the timing of the looking at a custodian search function in effect supplanting the registrar search function.

Ms. Churley: I see. OK. It is a memory thing, then, I understand. So could we have this amendment, then, with (c) removed?

The Chair: Yes, we can break the motion into sections. Do we agree to drop (c)? OK, drop (c). That's the motion on the floor. Any further debate on the motion? If there is none, I'll put the question. Shall the amendment, (2)(a) and (b), carry? Recorded vote.

Ayes

Arnott, Churley, Sterling.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Ms. Churley, page 34.

Ms. Churley: I apologize to the committee and staff for that moment of confusion.

I move that subsection 15(8) of the bill be struck out.

I'm sure I'm going to have the same problem now.

The Chair: Do you have any comments?

Ms. Churley: Again, it pertains to the provision of counselling, but because I don't have a note as to exactly what it was, I forget what part of the provision of counselling it pertains to.

The Chair: Any further debate?

Mr. Sterling: What's subsection 163(4) of the act?

Ms. Churley: That's what we're just getting at now.

The Chair: Staff, can you assist?

Ms. Krakower: Section 15(4), clause 163(2)(c) of the act is repealed. That's the registrar's authority to ensure that counselling is made available to persons who receive non-identifying information and others is repealed. She is suggesting, I believe, that that section be struck out.

The Chair: Mr. Sterling, any other questions? Ms. Churley?

Ms. Churley: My amendment takes away mandatory counselling. That's what it pertains to. But if the other amendment was voted down, how can this even be relevant?

The Chair: I hear you. Any further debate? If there is none, then let's put the amendment to the floor.

Ms. Wynne: Are you withdrawing it?

Ms. Churley: Yes. I'm going to withdraw it. It pertains to counselling, asking to remove the section that requires mandatory counselling, and there is no counselling any more.

The Chair: Page 34 is withdrawn.

There is no motion on page 35.

Shall section 15 carry?

Ayes

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

Nays

Arnott, Sterling.

The Chair: Section 15 carries.

We'll go to section 16. Shall section 16 carry? Recorded vote.

Ayes

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

The Chair: Those opposed? It carries.

Section 17, page 36.

Mr. Parsons: I move that subsection 165(1) of the Child and Family Services Act, as set out in section 17 of the bill, be struck out and the following substituted:

"Confidentiality of adoption information

"(1) Despite any other act, after an adoption order is made, no person shall inspect, remove, alter or disclose information that relates to the adoption and is kept by the ministry, a society, a licensee or a designated custodian under section 162.1 and no person shall permit it to be inspected, removed, altered or disclosed except as authorized under this act."

Mr. Sterling: What's the difference between what you're proposing and what's in the bill?

Mr. Parsons: This ensures that although information can now be given out, it can be given out only to the adoptee and the birth parent, not to birth kin or to the public in general.

Mr. Sterling: The other part is, does this tie in with the section which we've stood down?

Ms. Krakower: No, it doesn't.

Mr. Sterling: If we created, not the registrar as it was, but some kind of registry, it wouldn't affect that particular individual? I don't know the intent of the section. I wasn't in on the discussions as to how you were going to deal with the records.

The Chair: Mr. Parsons, I think the question is to you.

Mr. Parsons: I'm not sure what you're—

Mr. Sterling: A section was stood down before, because of Ms. Churley. I had some empathy for the position that there isn't really going to be a place where these records are to be kept. I didn't know whether it was the intent of the government members to bring forward an amendment to create some kind of central registry to allow people, for instance in private adoptions, to register a document or have somebody keep a document somewhere. Does this section relate to that section at all? If it doesn't, that's fine.

1050

Mr. Parsons: No, it does not.

Mr. Sterling: OK, that's fine.

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

Ayes

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

The Chair: Uh—

Ms. Churley: I didn't vote.

The Chair: OK, so it is not—

It carries.

Now we'll deal with section 17. Shall section 17, as amended, carry? Those in favour?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Section 17 carries.

Section 18, page 37.

Ms. Churley: I move that subsection 18(2) of the bill be struck out and the following substituted:

"(2) Subsection 166(4) of the act is amended by adding the following paragraph:

"1.1 An adult child of the adopted person."

I'd like to speak to this. I do remember this one quite well, and I'll explain it.

One of the critical flaws with the bill that I've outlined before that I feel must be corrected, and so does the adoption community that has been involved in this, is that it rescinds the right of an adoptee's birth parents and their respective kin to non-identifying information. Under the current law, these parties can have access to descriptive information about family members who have been adopted. That's an issue that I raised yesterday. For the benefit of those who weren't available to hear this, this has been rescinded.

Some people tend to think that there is just one file up there in Thunder Bay in the Registrar General's office: the original birth registration and birth certificate. But the registry also keeps files within the government, and that is where in fact searches are conducted. People can, and have always been able to, apply for so-called non-identifying information. As I explained, I received that non-identifying information and it helped me with my search. It is a really critical piece of information for those who are searching.

Let me give an example: My name, Churley, which my son had access to since he was very young, is a very uncommon name, an old Newfoundland name, and is easy to track down. But if you're looking for your birth mother and her name is Smith, and that's on your adoption paper and you were born 30 or 40 years ago or whatever, without some of that non-identifying information that gives some descriptive information, the search can be very, very difficult, if not impossible. The fact that that is rescinded is a very serious problem. That is what this amendment does.

The non-identifying information provides background information about the birth or adoptive family. As I said, it's extremely important to those who are trying to learn more about family members. Often, adoptees will seek out this information prior to deciding if they want to search. It provides a bridge between knowing and not knowing. We hear this a lot. It's extremely important information to people looking.

The second part of the amendment will expand the right to non-identifying information to adult children of adoptees so that they can seek out answers about their genealogy, heritage and, in particular and most importantly, medical information.

Mr. Parsons: We don't disagree with the intent of this amendment, but it is our belief that it should be handled through regulation rather than legislation because experience may prove that there is a need or desire to expand the circle of who will have access to non-identifying information. It is our intention to cover this through regulation so that changes can be made easier. Certainly, we agree with the philosophy of this amendment.

The Chair: Ms. Churley, or back to Mr. Sterling.

Ms. Churley: Go ahead.

Mr. Sterling: You're talking about health information here?

Ms. Churley: Yes, primarily.

Mr. Sterling: I don't have any objection to that, but isn't it better to try to define this in some way in the legislation rather than—I've heard a lot of criticism today about the rules not being clear in the past. I continue to see this tendency of the government to go toward regulation because they haven't thought this thing through.

Mr. Parsons: The balance that has to be achieved is between whom the information does and doesn't go to—should it go to siblings, and should it go to children of siblings.

Ms. Churley: It does already.

Mr. Parsons: I'm not disagreeing with that, but ultimately it's how far should it go. We have indicated, and I believe the staff have mentioned it, that we're committed to consultation during the creation of the regulations. It continues to be our belief that this requires some consultation and will be incorporated in regulations. If two or three years from now or at the review at

five years there's a need for it to be changed, if it is in regulations it can be changed fairly easily.

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

Ayes

Arnott, Churley, Sterling.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We'll move to page 38. Ms. Churley, please.

Ms. Churley: I move that subsections 18(4) and (5) of the bill be struck out.

All I can tell you at the moment is that it refers to the provision of non-identifying information. I'd have to look again, but I'm sure that it's complementary to the amendment that was just voted down. It's right here.

The Chair: Any debate on this amendment? If there is no additional—

Mr. Sterling: Just wait a minute.

The Chair: Yes.

Ms. Churley?

Ms. Churley: Sorry; this relates back to counselling again, and my amendment would strike out the mandatory counselling. Is that not correct? Again, I can't quite remember the justification for this one.

Ms. Laura Hopkins: The motion proposes striking out subsections 18(4) and 18(5) of the bill, which refer to current provisions of the act dealing with disclosure of information and counselling. The effect of the motion would be to preserve in the act a provision requiring the registrar to disclose information in specified circumstances and also to preserve in the act a provision requiring counselling to be made available when the registrar discloses this information.

Ms. Churley: Upon request. That's fine. Thank you for that.

The Chair: Is there any further debate on this amendment? If there is none, I shall put the question. Recorded vote.

Ayes

Arnott, Churley.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: It does not carry.

1100

Mr. Parsons, page 39.

Mr. Parsons: I move that subsection 18(4) of the bill be struck out and the following substituted:

"(4) Subsection 166(5) of the act, as amended by subsection (3), is amended by striking out the portion before paragraph 1 and substituting the following:

"Transition

"(5) If a person has made a request to the registrar under subsection (4) as it reads immediately before the day on which subsection 18(2) of the Adoption Information Disclosure Act, 2005 comes into force, asking the registrar for non-identifying information that relates to an adoption, the registrar shall do one of the following ...

"(4.1) Subsection 166(5) of the act, as amended by subsections (3) and (4), is repealed."

The Chair: Any questions or comments on the motion?

Mr. Arnott: I'd like to ask the parliamentary assistant for an explanation.

Mr. Parsons: Any application for non-identifying information received by the adoption disclosure unit before the enactment of the new legislation will continue to be processed. The applications will not die when the new legislation comes into effect.

Ms. Churley: It's an interim measure to provide this information, which is entirely supportive—

Mr. Parsons: It's a transition, yes.

Ms. Churley: —but of course it still begs the question, what is going to happen to that non-identifying information after? I support this, it's important that it's there, but I think it highlights that major issue that is not going to be dealt with in this legislation and I just want to highlight again how important that is going to be to get done in the regulations.

The Chair: Is there any the further debate? I shall now put the question.

Ayes

Churley, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: Carried.

Page 40, Mr. Parsons.

Mr. Parsons: I move that subsection 18(6) of the bill be struck out and the following substituted:

"(6) Subsection 166(7) of the act is amended by striking out 'and shall also make counselling available to him or her'.

"(6.1) Subsection 166(7) of the act, as amended by subsection (6), is repealed."

The Chair: Any comments or discussion?

Mr. Sterling: What does that mean?

Mr. Parsons: It's the requirement for mandatory counselling prior to information being shared.

The Chair: Is there any further debate?

Ms. Churley: This, as I understand it, gets rid of counselling, either optional or mandatory, right away. You're removing counselling even during the interim period; is that correct?

Mr. Parsons: This becomes effective when the bill is proclaimed. It removes the requirement for mandatory

counselling. Any individual is always free to seek out counselling in the community, as they have in the past.

Ms. Churley: But I mean the government-provided counselling. Are you saying that this will—

Mr. Parsons: This removes the mandatory requirement.

Ms. Churley: Are you saying, then, that the government will maintain counselling under request within this—

Mr. Parsons: I'm pretty sure I didn't say that; no.

Ms. Churley: No, but what you said left the impression that that was so. It gets rid of counselling, period. The government-sponsored counselling is gone—

Mr. Parsons: Yes.

Ms. Churley: —either mandatory or upon request.

Mr. Parsons: But it does not preclude an individual seeking out counselling.

Ms. Churley: Of course; it's a free country. Everybody can get counselling. But the government counselling will be gone.

Mr. Parsons: Right.

Mr. Sterling: Why wouldn't you maintain what the existing system is until you're going to change the system? You're sort of halfway between. Why complicate it like this? It just seems to me that if people enter into the application process with the idea that mandatory counselling is going to be there—the present process requires both parties to agree to the disclosure. So part of their decision might be based upon the fact that there's mandatory counselling. We're saying we're going to carry on with what's happened, but the counselling may not happen to the other party. Why are we doing that?

Mr. Parsons: The requirement that it be mandatory is the primary focus, in that it is—I'm repetitive. It's extremely paternalistic to say you must have counselling prior to it. So, if we set that aside, the question that I believe you're asking is, why does the government not continue to say, "Well, here are the counselling services?" I think this—

Mr. Sterling: No. I'm saying as long as the present system is in place, which is going to be until the proclamation plus 18 months.

Mr. Parsons: Yes. I think it uncomplicates it in that, is it truly the function of the custodian that provides the information to also provide counselling? No. Counselling is a separate function that is available in other places in this province with other individuals. Those seeking out information or those being contacted may very well choose to access counselling, but it is not the intention that it be part of this process. They are perfectly free to seek counselling elsewhere.

Mr. Sterling: I guess my concern is that you enter into a process with the understanding of what the process is. You're saying that the process is going to continue on for another 18 months or so, or two years or whatever. All of the sudden, the rules have changed. I on one side went into the process with this understanding: that both I would be required to get counselling, as would the other party to this disclosure. Now we're changing what the inner rules are.

The other part too is, I don't know how all these counsellors are hired or whatever. I would imagine that counselling has a wide, wide variety in its scope and state. I mean, counselling may be very minor in some cases, but it may be very major. Perhaps the staff would like to comment.

Ms. MacDonald: I think it may be helpful to distinguish. As Mr. Sterling indicates, there is a wide variety of counselling. The ADU at the moment provides counselling which ranges from more facilitative counselling through to something that isn't therapeutic counselling. Clearly it is not, because they're not qualified as professional therapeutic counsellors, but is, let's say, a sympathetic, supportive approach in dealing with clients.

It was our intent that not therapeutic counselling, but the other kind of counselling, the facilitative counselling, could indeed continue until the new regime comes into place. I erred in not distinguishing the types of counselling for the parliamentary assistant, and I apologize for that.

The Chair: Thank you. Any further debate?

Mr. Sterling: That facilitating counselling is not negated by this amendment.

The Chair: Thank you. I shall put the question. Recorded vote.

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Churley.

The Chair: The motion carries.

Mr. Parsons, page 41.

Mr. Parsons: I move that section 18 of the bill be amended by adding the following subsections after subsection 18(9):

"(10) Section 166 of the act is amended by adding the following subsection:

"Transition: cessation of activities

"(10) On the day on which this subsection comes into force, the registrar shall cease any activity under subsection (5) that is not yet completed in connection with a request made under subsection (4).

"(11) Subsection 166(10) of the act, as enacted by subsection (10), is repealed."

The Chair: Are there any comments, any questions?

1110

Ms. Churley: I don't think I can support this because, if I understand it correctly—I have an amendment that deals with this, that requests the ADR that non-identifying information not completed when the act goes into force will remain unfinished. I mean, any information that's not completed but is in the process, once the act comes into force, that's it; it will not be com-

pleted. I think that's what your amendment does. Am I correct on that?

Mr. Parsons: Right.

Ms. Churley: That even if it's in the hopper, in process—

Mr. Parsons: It will be transferred over to the custodian.

Ms. Churley: To the custodian.

Mr. Parsons: Yes.

Ms. Churley: But it says, "Subsection 166(10) of the act, as enacted by subsection (10), is repealed." Can you clarify for me that that will continue to—

Ms. Krakower: Yes, I can. The policy intent is that after the registrar winds down at the end of the transition period, the custodian of adoption information would then carry on any request that's outstanding for dealing with the provision of non-identifying information.

Ms. Churley: OK.

The Vice-Chair (Mr. Khalil Ramal): Is there any discussion? Is everybody in favour?

Ms. Wynne: Could I ask for a three- to five-minute recess, please?

The Vice-Chair: Any objection to a five-minute recess? No?

Ms. Churley: It's just that I was about to ask to have my next few amendments stood down because I'm doing double duty on a few things today for my caucus and I have to be gone—

Ms. Wynne: You're asking for—

Ms. Churley: I have to leave. I was about to ask for my next few amendments to be stood down until I return.

Ms. Wynne: That's fine.

The Vice-Chair: No problem. Shall the motions carry?

Ms. Wynne: I've asked for a five-minute recess, but Ms. Churley wanted to ask for her motions to be stood down. You're going to put that request?

Ms. Churley: Yes, I've put that request. I can't stay, so I'll let you figure it out.

Ms. Wynne: OK.

Ms. Churley: I have a few amendments coming up. Could I request that they be stood down until I return?

The Vice-Chair: Is there any objection?

Ms. Wynne: No.

Ms. Churley: Thank you.

Mr. Sterling: You're going to return today?

Ms. Churley: Oh, yes. I'll be back shortly.

The Vice-Chair: We're having a five-minute recess. Be back by 20 after.

The committee recessed from 1117 to 1122.

The Chair: We'll deal with 41 now. Any further debate on page 41? If there is none, then I shall put the question. Shall the amendment carry?

Mr. Arnott: Mr. Chair, would it be possible to ask for another five-minute recess, since two of the members who are very interested in this bill are not here?

The Chair: Is there consent?

Mr. Parsons: Just vote with us, and let's get on with it.

The Chair: Is there consent, please? Yes, five minutes.

The committee recessed from 1122 to 1127.

The Chair: We are resuming. When we went for the break, we were ready to take the vote on page 41. If there is no further debate, I will now put the question. Shall the motion carry? This is a recorded vote.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The motion carries.

Shall section 18, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Section 18 carries.

Ms. Wynne: Mr. Chair, I just wanted to clarify that before we took the first break, Ms. Churley had asked that her motions be stood down until she returns. I just wanted to be clear that we had agreement on that.

The Chair: Do we agree on that? Yes. Therefore, the next one, 41(a) and (b), will be stood down. We'll move on to page 42 and 42(a).

Mr. Parsons: I move that subsections 19(1) to (3) of the bill be struck out and the following substituted:

"19(1) Subsection 167(1) of the act is repealed.

"(2) Subsections 167(2) and (3) of the act are repealed.

"(3) Subsection 167(4) of the act is repealed and the following substituted:

"Transition

"(4) If a person has applied under subsection (2) as it reads immediately before the day on which subsection 19(2) of the Adoption Information Disclosure Act, 2005 comes into force to a society or to the registrar to be named in the register,

"(a) the registrar shall enter the applicant's name in the register; and

"(b) the registrar shall then make a search to determine whether both of the following persons are named in the register:

"i. the adopted person, and

"ii. another person who is his or her birth parent, birth grandparent, birth sibling or another person named by the registrar in the register as if he or she were a birth parent.

"(3.1) Subsection 167(4) of the act, as re-enacted by subsection (3), is repealed.

"(3.2) Subsection 167(5) of the act is repealed and the following substituted:

"Further consents

"(5) If the registrar determines that an adopted person and another person described in subsection (4) are both named in the register, the registrar shall give both persons an opportunity to consent in writing to the disclosure of information in accordance with subsections (8) and (9).

"(3.3) Subsection 167(5) of the act, as re-enacted by subsection (3.2), is repealed."

The Chair: Is there any debate on this motion?

Mr. Sterling: I'd like to know what's happening. What does all this do?

Mr. Parsons: This is a transition provision that allows the registrar to place a person's name in the adoption disclosure registry and, if a match and consent is made between the two, to continue the function of bringing the two parties together.

Mr. Sterling: So instead of doing away with 167(4), you've kept that piece in place?

Mr. Parsons: This continues the function of the adoption disclosure registry. It effectively continues it through the transition period. The custodian assumes responsibility. It's a transition only.

The Chair: Any further debate? If there's none, I shall now put the question. A recorded vote.

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: The amendment carries.

We will defer and deal later with section 19. We'll move into section—

Interjection.

The Chair: You're right. I'm sorry. Page 43 then. Mr. Parsons.

Mr. Parsons: I move that section 19 of the bill be amended by adding the following subsections after subsection 19(15):

"(16) Section 167 of the act is amended by adding the following subsection:

"Transition: cessation of activities

"(15) On the day on which this subsection comes into force, the registrar shall cease any activity under this section that has not yet been completed in connection with an application made under subsection (2) or a consent given under subsection (5).

"(17) Subsection 167(15) of the act, as enacted by subsection (16), is repealed."

The Chair: Any questions? Any debate? If there's no debate, I will put the question. Shall the motion carry?

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It does carry.

We will be going to page 46. Mr. Parsons, please.

Interjection.

The Chair: We cannot, because we stood down number 41a and 41b, and 45 is also NDP, so 46, please.

Interjection.

The Chair: That's fine. If you look at page 45, since originally the NDP had asked but there was no notice, I felt that we should wait. I thought we should wait just in case—

Mr. Parsons: Sure.

The Chair: I mean, what's the big deal? Let's move on to page 46.

Mr. Parsons: I move that the bill be amended by adding the following section after section 20:

"20.1(1) The act is amended by adding the following section:

"Transition: request for search

"168.1(1) Such persons as may be prescribed may ask the registrar to search on the person's behalf in such circumstances as may be prescribed for a specific person in a prescribed class of persons.

"Same

"(2) The registrar shall have a discreet and reasonable search made for the specific person.

"(2) Section 168.1 of the act, as enacted by subsection (1), is repealed."

Mr. Sterling: This is in the interim, is it?

Mr. Parsons: No. This establishes the provision for the new searches to take place after the custodian has assumed responsibility. This is the searches that will be for medical reasons.

Ms. MacDonald: This would be an interim provision. You're quite right: It is new searches. It would be new searches that would be coming in during the transition period. So before the kicking in of the custodial function, it would in effect allow new searches to be taken in and acted upon by the registrar before the custodian can take over.

The Chair: Any further debate? If there is none, I shall put the question on a recorded vote. Those in favour?

Ayes

Arnott, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries.

We will go to section 21, page 48. Mr. Parsons, please.

1140

Mr. Parsons: I move that section 21 of the bill be struck out and the following substituted:

"21(1) Subsections 169(1) and (2) of the act are repealed.

"(2) Subsection 169(3) of the act is repealed and the following substituted:

"Transition

"(3) If a person has made a request to the registrar under subsection (1) or (2) as those subsections read immediately before the day on which subsection 21(1) of

the Adoption Information Disclosure Act, 2005 comes into force, asking the registrar to search on the person's behalf for a specific person,

"(a) the registrar shall have a discreet and reasonable search made for the specific person; and

"(b) the registrar shall seek to ascertain whether that person wishes to be named in the register.

"(3) Subsection 169(3) of the act, as re-enacted by subsection (2), is repealed.

"(4) Subsection 169(4) of the act is repealed.

"(5) Section 169 of the act is amended by adding the following subsection:

"Transition: cessation of activities

"(5) On the day on which this subsection comes into force, the registrar shall cease any activity under this section that has not yet been completed in connection with a request made under subsection (1) or (2).

"(6) Subsection 169(5) of the act, as enacted by subsection (5), is repealed."

Mr. Sterling: Does this change anything in terms of the status quo as to the procedures now? Does it add additional searching functions for the registrar in the interim?

Mr. Parsons: No.

Mr. Sterling: Just the status quo?

Ms. Krakower: During the transition, just the status quo. You're correct.

The Chair: Is there any debate? If not, I will put the question. Shall the motion carry?

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries. Thank you.

Now we go to section 22, page 50. Mr. Parsons, please.

Mr. Parsons: I move that subsection 22(2) of the bill be struck out and the following substituted:

"(2) Subsection 170(2) of the act is repealed.

"(2.1) Subsection 170(3) of the act is amended by striking out 'When a person makes a request under subsection (2)' and substituting 'If a person has made a request to the registrar under subsection (2) as it reads immediately before the day on which subsection 22(2) of the Adoption Information Disclosure Act, 2005 comes into force.'

"(2.2) Subsection 170(3) of the act, as amended by subsection (2.1), is repealed."

The Chair: Are there any questions or debate? Mr. Sterling?

Mr. Parsons: An explanation?

The Chair: Yes, please.

Mr. Parsons: Again, a transition provision to allow the registrar to disclose non-identifying information that relates to an out-of-province adoption after the section authorizing such a request was repealed.

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

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries. Thank you.

Number 51. Mr. Parsons, please.

Mr. Parsons: I move that section 22 of the bill be amended by adding the following subsections after subsection 22(7):

"(8) Section 170 of the act is amended by adding the following subsection:

"Transition: cessation of activities

"(8) On the day on which this subsection comes into force, the registrar shall cease any activity under this section that has not yet been completed in connection with a request made under subsection (2).

"(9) Subsection 170(8) of the act, as enacted by subsection (8), is repealed."

The Chair: Is there any debate on this section?

Mr. Sterling: Where is the provision for the kick-in date when the registrar ceases activity? Is the date prescribed?

Ms. Krakower: The date is not prescribed.

Mr. Sterling: So it may come into effect *[inaudible]* the administration. What's happening?

Ms. Krakower: It's the date on which the act would be proclaimed, and it would depend—you're correct—on business processes being in place.

Mr. Sterling: No, no. The act is proclaimed, and then isn't there a time frame after the act is proclaimed?

Ms. Krakower: There likely would be an 18-month period between the date of royal assent and proclamation.

Mr. Sterling: No.

Ms. Susan Yack: If I could—

Mr. Sterling: Yes.

Ms. Yack: —different sections of the bill would be proclaimed at different times, so that, for example, the ability to request the information, the repeal of that section, would be proclaimed earlier. This transition section allows the registrar to continue to process the requests, and then the entire bill would be proclaimed, it's intended, 18 months after royal assent.

Mr. Sterling: Is the 18 months in the legislation?

Ms. Yack: No, that's not in the legislation.

Mr. Sterling: So there's no definite time that people know this trigger is going to be pulled.

Ms. Krakower: There is an intent to—

Mr. Sterling: I know the intent, but people's lives are based upon what is going to happen.

Ms. Krakower: There is an intent to conduct a widespread public education campaign, well in advance of the date on which the full act would be proclaimed, to let people know what the implications are, both adoptees and birth parents, so that they can take action in terms of applying for no-contact notices etc. well in advance.

Mr. Sterling: Do you not think it would be better if it were contained in the legislation as to when—OK, that's fine.

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

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion carries.

Now we will deal with sections 23 to 28. There are no amendments. I will ask for a recorded vote, unless there are any questions.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Those sections carry.

We'll go to section 29, page 52.

Mr. Parsons: I move that clause 220(1)(c.2) of the Child and Family Services Act, as set out in subsection 29(2) of the bill, be amended by adding at the end "and governing the fees that the designated custodian may charge in connection with the exercise of its power and the performance of its duties."

The Chair: Any debate on this?

Mr. Sterling: Can you give me an explanation of what this is about?

Mr. Parsons: This will enable the custodian to charge fees for service provision to offset some of the operating costs.

The Chair: Any further debate? If there's none, I will put the question. Recorded vote.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: It carries.

Page 53.

Mr. Parsons: I move that section 29 of the bill be amended by adding the following subsections after subsection 29(4):

"(4.1) Subsection 220(1) of the act is amended by adding the following clause:

"(f.1) prescribing the matters referred to in subsection 168.1(1)';

"(4.2) Clause 220(1)(f.1) of the act, as enacted by subsection (4.1), is repealed."

This amendment will allow for the intake of new searches during the transition period for serious medical concerns.

The Chair: Is there any debate? If there's none, I will put the question. Recorded vote again.

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries. Shall section 29, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: It carries.

Section 29.1 is a new section

1150

Mr. Parsons: I move that the bill be amended by adding the following section after section 29:

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

"Review re disclosure of adoption information

"225. The Lieutenant Governor in Council shall ensure that a review of the operation of sections 161 to 172 and section 176.1 is conducted within five years after section 29.1 of the Adoption Information Disclosure Act, 2005 comes into force."

Mr. Arnott: I'd like to move an amendment to the amendment.

I move that section 225 of the Child and Family Services Act, as set out in motion 54, be amended by striking out "The Lieutenant Governor in Council shall ensure that a review" and substituting "The assembly shall inure that a public review".

This is similar and consistent with a motion we put forward earlier this morning between motions 24 and 24(a), calling upon the government members to support a more public process in five years' time to review this whole thing, as opposed to a private administrative process that would not necessarily allow for public input or any accountability.

The Chair: Is there any further debate on the amendment to the amendment?

Mr. Sterling: This is a similar motion to the one we had before with regard to this whole matter as to whether we have a public review or a review behind closed doors dealing with administration matters. My view is that this is such an important topic and such an important matter that there should be a public review, not only from the point of view of looking at where this is going to fail—and it will fail for a significant minority of the some 500,000 people who will be affected across this province—but it's also important from the point of view of saying, can we get better access to health records, can we get better information during the adoption proceeding going forward, and maybe even going backwards too.

Number one, I don't know why it's here. If in fact the cabinet is going to decide to have an administrative

review, they can do that when they want. They can do it after one year; they can do it after two years; they can do it whenever they want to do it. You don't need it in the act. By just dumping all of the so-called obligation on the cabinet—when you say "review," they can do a very cursory review; it could be a two-hour review or it could be a two-year review. The section is meaningless without public input into the process. I just think that this again is one of those sections the government is putting forward, in a lot of ways covering up the fact that they don't want to hear—they want to give the impression that they want to be consulted with regard to this process, but they don't.

Basically, this is internal, it's about the administration: Are the ducks in order and all the rest. That's a job for the public accounts committee or the auditor to look at; it's not really a job for the bureaucracy to look at in terms of what's going on. They always do that in conjunction with the auditor. So this is a phony section unless you have the public involved in it.

The Chair: If there is no further debate, I will put the question. Shall the amendment to the amendment carry?

Ayes

Arnott, Sterling.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We go back to the original motion. Is there any further debate on that? If there's none, I'll ask for a recorded vote.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: It carries. Therefore, we move to section 30, page 55.

Mr. Parsons: I move that subsection 65(8) of the Freedom of Information and Protection of Privacy Act, as set out in section 30 of the bill, be struck out and the following substituted:

"Information relating to adoptions

"(8) This act does not apply with respect to the following:

"1. Notices registered under section 48.2.2 of the Vital Statistics Act and notices and information registered under section 48.3 of that act.

"2. Notices, certified copies of orders and other information given to the Registrar General under sections 48.4 to 48.4.5 of that act.

"3. Notices and other information given to a designated custodian by the local director of a children's aid society under section 48.4.4 of that act and information given to a birth parent or an adopted person under that section.

"4. Information and records in files that are sealed under section 48.5 of that act."

This amendment reflects some other changes that we previously made to ensure that the adoption information remains available to the adoptee and to the birth parent, but is not open to the general public under freedom of information.

Mr. Sterling: In my view—or from what I see, and maybe you can confirm this—this widens the exemptions from the freedom of information act, rather than narrows them. Is that correct?

Mr. Parsons: This information was always exempt from the freedom-of-information act, but it has now been moved to a different act. One never could, under the freedom-of-information act, access adoption information on another individual.

Mr. Sterling: No, that's not my question. The existing section says, "This act does not apply with respect to information and records that are unsealed by virtue of section 48.1 or 48.2 of the Vital Statistics Act or notices and information registered under section 48.3 of that act." My question is, is this section wider than the section I just read in the original draft of this bill?

The Chair: Before we go any further, can I just have a clerical correction from staff, please?

The Clerk Pro Tem (Ms Lisa Freedman): Mr. Parsons, can we just get you to read paragraph 4 back in, because you read the word "sealed" and it says "unsealed" in the drafted motion, so if you could reread that.

Mr. Parsons: "4. Information and records in files that are sealed under section"—

Interjections.

The Chair: Maybe you have a different page. Just wait. It should be "unsealed" unless you have an old page. Does it say "sealed" or "unsealed"?

Mr. Parsons: It says "sealed."

The Chair: It's the wrong one, then. Sorry. There was a change made and you may have—

Interjection: It's an error.

The Chair: It's an error.

Mr. Parsons: I feel exhonerated. Mine does say "replacement motion," but it says "sealed," if you would witness it, Mr. Leal.

The Chair: We do have a replacement for that, so just read clause number 4.

Mr. Parsons: Mr. Leal confirms that I'm not absolutely wrong.

"4. Information and records in files that are unsealed under section 48.5 of that act."

The Chair: Thank you. Is there any further debate?

Mr. Sterling: Under the original provision in this act, as was introduced, the words which I just read exempted certain information from the freedom-of-information act. Am I correct in saying that this new section actually exempts more information from the freedom-of-information act—which I support. Is that correct?

Ms. Krakower: It's not actually broadening the provisions that existed, but this amendment results from incidental amendments to the Vital Statistics Act to include contact preferences that were introduced earlier.

Mr. Sterling: So is it narrower?

Ms. Krakower: No.

Mr. Sterling: You say it's the same.

Ms. Krakower: It's the same.

The Chair: Is there any further debate? If there's none, I will now put the question.

Ayes

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

The Chair: It carries. Thank you. I will ask for a vote on section 30. Shall section 30, as amended, carry?

Ayes

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

Nays

Arnott, Sterling.

The Chair: The section carries. I will ask for another vote on sections 31, 32 and 33. There are no changes.

Ayes

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

Nays

Arnott, Sterling.

The Chair: The sections carry.

At this time, we are going to break for lunch. We will be back and we will try to address page 56.

The committee recessed from 1203 to 1310.

The Chair: Thank you for coming back. We left off before lunch at page 56. Mr. Parsons?

Mr. Parsons: Yes, Chair. I wish to withdraw amendment 56.

The Chair: So 56 has been withdrawn.

Interjections.

The Chair: We can go back and start addressing the ones that were stood down, which are pages 41a and 41b. Am I right? Ms. Churley, please.

Ms. Churley: I move that section 19 of the bill be struck out and the following substituted:

"19(1) Subsection 167(5) of the act is amended by striking out 'after ensuring that each of them receives counselling' and substituting 'after ensuring that counselling has been made available to each of them upon request.'

"(2) Subsection 167(6) of the act is amended,

"(a) by striking out 'the material described in paragraphs 1, 2 and 3' in the portion before paragraph 1 and substituting 'the following material'; and

"(b) by striking out paragraph 3.

"(3) Clause 167(9)(a) of the act is amended by striking out 'first ensuring that each person to whom the material is made available receives counselling' and substituting 'first ensuring that counselling has been made available upon request to each person to whom the material is made available.'

"(4) Clause 167(9)(c) of the act is amended by striking out 'if the registrar is satisfied that the person will receive appropriate counselling' at the end and substituting 'if the registrar is satisfied that appropriate counselling will be made available to the person upon request.'

"(5) Subsection 167(11) of the act is amended by striking out 'first ensuring that each person to whom the material is made available receives counselling' and substituting 'first ensuring that counselling is made available upon request to each person to whom the material is made available.'

"(6) Subsection 167(13) of the act is repealed and the following substituted:

"Duty of society

"(13) A society shall make counselling available upon request to persons who receive identifying information from the society, who are named or may wish to be named in the register or who are concerned that they may be affected by the disclosure of identifying information."

The Chair: Is there any debate on the motion?

Ms. Churley: If I could explain, I think we've lost this battle, but it's is my last kick at the can here in terms of providing counselling upon request—not mandatory—and I'm referring to section 19, where all of these clauses that provide for counselling are repealed. This is my attempt to, yes, repeal the mandatory aspect but actually then include sections that would allow for counselling upon request provided by the agency.

Mr. Sterling: Did we not amend this section already—

The Chair: We did? Mr. Parsons, can you assist?

Mr. Sterling: —which effectively put the status quo in place for the interim? Is that correct?

Mr. Parsons: For the interim, correct.

Ms. Churley: Only for the interim, not after.

Mr. Sterling: I guess this section would try to do what we've tried to do in another amendment.

Ms. Churley: If you look at section 19 and then look at the act—you see, I got my act together over lunch and revisited my amendment, so I know what I'm talking about here. If you turn to page 11 in this act, you will see that, without definition here—but all of these subsections within the Child and Family Services Act have been repealed, anything to do with counselling.

Mr. Sterling: We put some back in. That was the first position—

Ms. Churley: For the interim, but—

Mr. Sterling: For the interim, for the transition.

Ms. Churley: Yes, but that's all.

Mr. Sterling: After the transition—

Ms. Churley: It disappears.

Mr. Sterling: —there's no counselling offered other than the generic counselling which a person may wish to get.

Ms. Churley: Yes. That's what this is attempting to do.

Mr. Sterling: But I don't know whether it does it. This changes the regime during the interim period as well, as I would read it.

Ms. Churley: I don't think so.

Mr. Sterling: In other words, it switches during the interim from a mandatory to a request-driven counselling system. Is that correct?

Ms. MacDonald: I believe the primary impact of Ms. Churley's proposed amendment would be in the future regime, but it would depend really on when the act, if approved, were proclaimed as to when the impact would arrive. But I believe your primary intent, is it not, Ms. Churley, is to ensure that there is counselling provided on a going-forward basis?

Ms. Churley: I was assuming that. I wasn't sure if it would take place right away. But I must say that if the impact would be felt right away, that would be OK too, because certainly those in the adoption community say that having mandatory counselling, even under the present regime, is not necessary, that lots of people are forced to take counselling. It's taxpayers' money and we're paying for these counsellors. Even if they don't want it, they're forced to before or during a reunion. My purpose was to make sure that there is counselling after the act comes into being but, on the other hand, mandatory counselling is not needed anyway, in my view and in the adoption community's view.

The Chair: Is there any further debate?

Mr. Sterling: My problem is I don't know whether the words reflect the intent. I agree with Ms. Churley in terms of offering counselling, not only for people who have sought information but for people who may have information revealed about them. But I'm not sure that those words are reflected in this particular amendment or that they affect the interim as well.

Ms. MacDonald: We have already dealt with the transition, as the parliamentary assistant pointed out. So the effect of this would be on the going-forward basis. It does, however, presuppose the existence of the adoption disclosure unit in its language. We have, through earlier approved provisions of the bill, provided that the function of the adoption disclosure unit would be subsumed within the custodian. The language in Ms. Churley's motion in subsection 19(4) refers to the registrar, which is a position that exists within the current adoption disclosure unit but would not occur within the custodian. I'm not sure if that answers your question, Mr. Sterling.

The Chair: It does. Any further debate? I will now put the question. Shall the motion carry?

Ayes

Churley.

Nays

Fonseca, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Now we are going to take a vote on section 19. Shall section 19, as amended, carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Section 19 does carry.

The next is section 20. Ms. Churley, it's page 45.

Ms. Churley: I recommend that the committee members vote against section 20 of the bill.

The Chair: There was a question. Therefore, we are only able to deal with section 20. I wanted to hold in case you had a question. I will ask for the vote on section 20, unless there are any questions. If there isn't, I will ask for the vote. Shall section 20 carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Churley, Sterling.

The Chair: Section 20 carries.

Page 47, Ms. Churley, section 21.

Ms. Churley: I move that section 21 of the bill be struck out and the following substituted:

"21(1) Section 169 of the act is amended by striking out 'registrar' wherever it appears and substituting in each case 'registrar appointed by the minister or a person designated by the minister'.

"(2) Subsection 169(4) of the act is amended by striking out 'may disclose information to the person who made the request, in accordance with section 167, as if both persons were named in the register' and substituting 'may disclose information in accordance with this act to the person who made the request'.

"(2) Section 169 of the act is amended by adding the following subsection:

"Designated person

"(5) The minister may designate persons or classes of persons to exercise the powers and perform the duties described in this section and may impose such conditions with respect to the designation as the minister considers appropriate.

"Same

"(6) A person who wishes to be designated under subsection (5) must satisfy such criteria as may be

prescribed, including criteria relating to the person's training and experience."

The Chair: Are there questions?

Mr. Sterling: I assume this would mean that there will be full disclosure during the interim period. Is that what you mean?

Ms. Churley: I see this as problematic, and it's in keeping with the Liberals' mandate to streamline the government. What the legislation does is dismantle the government's role in assisting with search and reunions and providing the counselling upon request. That's what this section addresses.

Mr. Sterling: But I think the government, in fairness, has amended all of the legislation, all of the old mechanism that, during the interim, was going to be there.

Ms. Churley: During the interim, but after the act is passed. Now, these amendments were written before the amendment of the custodian came forward, so we now have that included, although it's still pretty vague, and we don't know what that custodian is going to do. This amendment simply tries to retain in the new act those services that are now provided and will be in the interim but then will disappear. That's all this does.

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

Ayes

Churley.

Nays

Fonseca, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Now I would like to take a vote on section 21, as amended.

1320

Ms. Wynne: Sorry, could you just repeat what you said? I'm not sure—

The Chair: Section 21. There was an amendment already put before. The second was refused.

Shall section 21, as amended, carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Churley, Sterling.

The Chair: Section 21 carries.

Now we are on section 22, and it's page 49. Ms. Churley?

Ms. Churley: I move that section 22 of the bill be struck out and the following substituted:

"22. Subsection 170(2) of the act is amended by adding the following paragraph:

"1.1 An adult child of the adopted person."

We have dealt with something similar to this before. What I'm trying to do here, again, is pertaining to retaining, not rescinding, the existing rights of adoptees, birth parents and their respective kin to non-identifying information. Again, under the current law—and this is very, very important—these parties can have access to the descriptive information we talked about earlier about family members who have been adopted. That is a right that kin of adoptees already have, and it's going to be rescinded. Section 170 of the Child and Family Services Act provides this right to persons adopted outside of Ontario and their families; however, the current bill before us is repealing this part of the act. I won't go into details again, but I explained earlier why this non-identifying descriptive information is so important.

The second part of the amendment expands the right to non-identifying information to adult children of adoptees so that they can also seek answers about their background, their medical history, and heritage, criteria, stuff like that.

The Chair: Is there any further debate? If there's none, I will take the vote on the amendment. Shall the amendment carry?

Ayes

Churley.

Nays

Fonseca, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

This section, section 22, has already had two amendments approved. Shall section 22, as amended, carry?

Ayes

Churley, Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Section 22 carries, as amended.

I believe that takes us all the way down to, shall the title—

Ms. Churley: You stood one down.

The Chair: There's another one? Sorry. Which one would that be? Oh, yes: page 31.

Ms. Churley: Yes, 31. I thank the legal counsel for helping draft a new replacement motion over the lunch hour. I hope you had time for your lunch. Thank you very much.

Everybody's got a copy of this replacement, I take it? No? Do you want me to proceed and read it out now, while people are waiting for a copy? What page did you say the original was?

The Chair: Page 31.

Ms. Churley: Do people want this distributed now, or shall I just read what I've got?

Interjection.

Ms. Churley: Let me read it to you. I'll read it first, into the record.

I move that section 14 of the bill be amended by adding the following section to the Child and Family Services Act after section 162.3:

"Duty to maintain records

"162.3.1(1) Every designated custodian, society, licensee and other person who participates in arranging adoptions or who creates records relating to adoptions shall maintain their adoption-related records for the period that is the longer of,

"(a) the applicable period required under the Archives Act for the documents described in section 3 of that act; or

"(b) at least 100 years after the placement of the adopted person.

"Exception

"(2) Subsection (1) does not apply with respect to those persons to whom the Archives Act applies."

You have in front of you the previous amendment, and there was some concern expressed around who this would actually end up applying to. I believe that this deals with that concern. If you have any other questions about it, perhaps legal counsel can help as well.

The Clerk Pro Tem: Just to clarify, you've withdrawn the first amendment and you're replacing it with this one.

Ms. Churley: Yes, I've withdrawn the first amendment and I am replacing it with this amendment.

The Chair: Are there any questions? Mr. Sterling may have a comment.

Mr. Sterling: We're placing an obligation on certain people to keep a record for 100 years. How do you do this? I'm interested in just working out how this is actually going to be implemented. My view is that any kind of registry of this type, where information should be in a repository held by the government in some form or fashion—when we say a "licensee and other person who participates in arranging adoptions," I'm thinking of my old legal profession. I'd love to live to be 135 years or whatever number it takes, but how is that implemented? Who is the retiring lawyer going to transfer that information to? I'm not in any way against the concept, but I'm just trying to figure it out. You're throwing this obligation out, and I don't know what is going to transpire as a result of throwing that obligation out.

Ms. Churley: First of all, let me say that it's absolutely critical that we find a way to keep those records. I think we'd all agree with that for, if nothing else, health reasons, but also for a number of reasons.

Mr. Sterling asks a good question. I would ask the government to find a way to make it work, and if there are precedents in other areas of record-keeping that you're aware of that are not conducted by a ministry of the government or any agency of the government, where records have to be kept for a period of time, and if that's regulated in some way to see that it happens.

Ms. Yack: Currently, under the CFSA, a licensee must keep records permanently, and if the licensee goes out of business, must turn the records over to the ministry.

Ms. Churley: So you could see that a mechanism can be put in place to ensure that records are kept.

Ms. Yack: Yes. That section would still exist, so the licensees would still have to turn them over.

Mr. Sterling: Help me here. In terms of where there is a private adoption and there's full disclosure on both sides, what is the long-term interest in providing for the record to be kept? If both sides have full information and know who each other is, what is the goal of retaining that record forever or for 100 years? I'm trying to be practical in what we're doing here.

The Chair: Staff will answer, please.

Ms. Yack: It may be that they're confidential records, and the way of safekeeping them is to deliver them to the ministry.

1330

Mr. Sterling: I don't like creating a clause in the middle of legislation when you don't really understand what the ramifications of it are. That's my concern here.

Mr. Parsons: I can't support this amendment. At the present time, I can think of cases—Mr. Sterling mentioned lawyers. There are retired social workers or former social workers who operate private adoption services. They sometimes do it for three, four or five years and then they do another retirement. Under the current legislation, they're required to transfer their records to the ministry and the ministry is required to keep them in hard copy for 100 years. I think that's working. I think it would be unrealistic to expect the individual who has done a few private adoptions to retain the records for 100 years because many of them will leave the province. It's similar to a lawyer. What do they do with the records?

Mr. Ramal: And some have died.

Mr. Parsons: Yes, and some of them die, eventually. I like the transfer to the ministry and then preserved by the ministry as the more viable option. It's what is done currently.

Ms. Churley: The problem is that you're talking about one set of records, but you're not talking about the other set of records, the records that are now being kept and maintained by the ADR, and there is no provision within this legislation. That is going to be shut down. We hear about a custodian, but the custodian is not going to take on the responsibilities and the work of the ADR at this point. Searches are now going to be basically privatized. That's what is going to happen here for all adoptions. We still don't know for sure what's going to happen with the existing records. I know we're going to be working through that through the custodian, and that's essential.

This is a huge issue with the adoption community. They are extremely concerned. There are a couple of issues they want to work out through regulation, but this is one that they—I assume you've heard about this. They are extremely concerned about the keeping of records in such sensitive situations. We're talking about genetics, we're talking about health, we're talking about very, very

important information that could be needed down the road, with no provision. They have been saved now within the ADR. It's a problem. If we don't deal with it now—I don't know if it can be dealt with through regulations or what, but it has to be dealt with. With the dismantling of the existing ADR, it is a serious problem.

Ms. Wynne: Could I just ask a clarification of staff? I think the issue that Ms. Churley raises is a very relevant one. Records that are now retained by one body are going to be in the hands of other bodies or individuals. Is the new process such that those records are going to be required to be turned over to the ministry? In the case of the individual practitioner, as Mr. Parsons said, is there the assumption that those are going to be turned over? The principle is, are the records going to be retained somewhere for the long term? Can somebody help? The reason I'm predisposed to look for language that would ensconce the preservation of the records is that I think the principle is correct; that those records should be preserved. I need some help from staff here.

Ms. MacDonald: I think perhaps we may not have been sufficiently clear earlier when we were speaking about records. It is the intent that the records of the current adoption disclosure unit would be transferred to the custodian. It is the intent that the custodian would be able to undertake a search, would be able to use the non-identifying information transferred to them from the adoption disclosure unit. And it is the intent, for technical and security reasons, that the custodian is going to be comprised of Ontario public servants, whether that's an agency or part of a ministry.

Ms. Wynne: If I can be clear, those are records that exist now that are going to be transferred. What about the future state? When new records are created, what is the provision for those to be preserved for the long term?

Ms. Krakower: The intent is that the custodian would be the keeper of those records as well, and would be subject to the same provisions as a ministry in terms of a retention schedule for those records.

Ms. Wynne: So a licensee, or the estate of a licensee, would be required to turn over those adoption records to the custodian? Is that going to be laid out in regulation?

Ms. Krakower: The intent is that it would be required to turn those over to the custodian.

Ms. Wynne: OK. Could I just ask what the problem would be with saying that in the legislation, as opposed to in regulation? I'm not a lawyer, so I have to ask this question.

Ms. Krakower: I'm just looking to my lawyer as well.

Ms. Yack: We've provided, in subsection 162.2, information that will be disclosed to the custodian. What that information is will be prescribed by regulation, but the authority is there in 162.2.

Ms. Wynne: The authority is there to require that a licensee turn those records over to the custodian?

Ms. Yack: To provide information to the custodian that the custodian could then use to disclose to adopted persons and birth parents.

Ms. Wynne: So you folks feel confident that that will be covered off and that any records that are retrievable will be retrieved and preserved in the custodian's hands.

Ms. Krakower: Yes, we feel confident.

Ms. Wynne: Thank you.

The Chair: Any further debate? Ms. Churley and then Mr. Sterling.

Ms. Churley: This is a part of the bill—there are a couple of parts—that is making me very nervous. I've got to tell you that when I hear the word "intent"—it's good that the intent is there. But what you're basically saying, as we move along, is that this custodian—now I'm getting the impression that the custodian is going to be staffed up and they're going to be doing essentially most of the same things, without the counselling, that the present infrastructure, the disclosure unit, is already doing.

If that's the case—we have an infrastructure—why are we dismantling an infrastructure that has all the elements of everything we're talking about? I'm not asking you because it was a government decision to dismantle a unit that already has the infrastructure in place, unless, of course, the thought at first was, "Let's dismantle it and privatize all of it," because that was the initial concern; the custodian idea got brought into it because that was the huge concern in the community. It's not really clearly defined how much power that custodian is going to have, but I'm starting to hear more and more that the intent is basically to rebuild the infrastructure we're tearing down, which I would like to see stay in place.

Let's just put on the record that we don't know yet. We're going to have to fight hard to make sure that basically that custodian will really replace an infrastructure we already have. That's what I'm being told here. If that happens, I'm fine with that; there's just no guarantee of it. I think you're telling me that the intent now is to basically tear down the existing office and rebuild it under a new name, "custodian," but with an infrastructure and a staff to basically do much of the work that's being done now.

Ms. Krakower: There are some additional functions, some different functions for the custodian, that aren't under the current system. That has to do with the involvement of the custodian in terms of the prohibition in cases of abused crown wards: The custodian will now have a function in terms of information-sharing back and forth with the Registrar General and the CASs around that.

Ms. Churley: Yes.

Ms. Krakower: That's a brand new function.

Ms. Churley: That could just as easily be added to the existing office, however. I can see that this is going to be voted down. I can tell you very clearly that we're going to have to pay very close attention to what this new custodian, who is taking on a lot of those functions, is going to be doing. For obvious reasons, people are very, very concerned and worried about the implications of the dismantling of this office without a clear picture of who is going to be taking over, in what capacity, how many of the existing things we're talking about are going to be

included in that and how much is going to be privatized and dealt with outside the system. Therein lie the concerns around what happens to new records and the older records.

1340

Mr. Sterling: As I understand your answer, 162.2(1) is the clause that's going to have people register or give the records to the custodian. You're going to prescribe who those people will be, so it may or may not include the lawyer who arranges a private adoption, or it may or may not include the example that Mr. Parsons raised. Is that correct? I don't know whether Mr. Parsons's example is a licensee or just a private person bringing two parties together.

Ms. Krakower: I think that would be considered a private adoption, and that information would be provided to the custodian.

Mr. Sterling: Only if they're prescribed. There's nothing in here that talks about lawyers.

Ms. Yack: Currently, only a children's aid society or a licensee can place a child for adoption, and children's aid societies and licensees are mentioned in that section.

Mr. Sterling: So a lawyer has to go through either a licensee or the children's aid?

Ms. Yack: That's right.

Mr. Sterling: OK. So everybody is in.

Ms. Yack: It specifically names children's aid societies and licensees, and those are the two bodies that can place a child for adoption.

The Chair: Further debate? If there is none, I'll put the question. Shall the amendment carry?

Ayes

Churley.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.
Shall section 14, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Churley, Sterling.

The Chair: That carries.
Shall the title of the bill carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The title of the bill carries.
Shall Bill 183, as amended, carry?

Ayes

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

Nays

Arnott, Sterling.

The Chair: It carries.
Shall I report the bill, as amended, to the House?

Ayes

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

Nays

Arnott, Sterling.

The Chair: It carries. Thank you.

Ms. Wynne: Mr. Chair, there's one other item that needs to be dealt with. At the beginning of these proceedings there was a document that was released in error. It was pulled back by the Chair. It was private information of the government. That document, I believe, still has to be dealt with in terms of what is to happen to it. I'd like to suggest that that document be held in confidence as part of the record of the committee for 50 years.

Ms. Churley: A hundred years.

Ms. Wynne: A hundred years? I'm saying 50.

The Chair: Is that a motion?

Ms. Wynne: Yes. I'd like to move that that document be held in confidence for a period of at least 50 years.

The Chair: Thank you for the motion. Now we open it for discussion. Mr. Sterling.

Mr. Sterling: As a former Attorney General, I understand this better than most or as well as most and as well as others. However, the one question I have is, who requested the document in the committee? Was it Mr. Jackson who requested it?

The Chair: Does staff know the answer?

Interjection: What's the question?

The Chair: Who requested the documentation in question.

Ms. MacDonald: We're not aware of anyone having requested the document.

Ms. Wynne: It wasn't.

The Chair: So it was brought by staff? I'm satisfied. Do you still have a question?

The Clerk Pro Tem: The information I have is that at its public hearing on May 18, the committee asked whether the Ministry of Community and Social Services had received any legal opinions on the constitutionality of the bill. The researcher then got—this is from Andrew McNaught, our committee researcher. He enclosed for the committee a copy of a legal opinion dated December 10, 2004, from the Attorney General's office. So that was provided to him and he provided it to the committee.

The Chair: So there was not a request; it was only given.

The Clerk Pro Tem: The committee asked whether they had received any legal opinions, and when that was

followed up by the researcher, it was provided to the researcher and provided back to the committee.

The Chair: OK. Any further debate?

Mr. Sterling: It's a bit of a problem when a document becomes public and then you try to make it private again.

The Chair: The motion is clear.

Mr. Sterling: The document's been out there and around. I think it was mentioned in the Legislature—

Ms. Churley: Some of us even read it.

Mr. Sterling: —a couple of times. I'm not sure by trying to deep-six it, you're doing—I mean, this was only proposed to me about 15 or 20 minutes ago.

The Chair: I hear you.

Mr. Sterling: So I would really like to have more time to think about it.

Ms. Wynne: Mr. Sterling, that's the precise reason that I'm moving the motion in the way that I am, that the document be preserved. If it's something that has to be revisited at some point, the document still exists and that can happen. But for now, I'm suggesting that a decision be made to maintain it in confidence, and if there's something that happens at a later date, then that's the case.

The Chair: Thank you. Any further debate? If there is none, then I'll take a recorded vote on that motion.

Mr. Sterling: What is the motion? Sorry.

Ms. Wynne: The motion I'm moving—well, actually you've written it down.

The Chair: Staff should read it since they've got it down.

The Clerk Pro Tem: That the legal opinion be held in confidence for up to 50 years.

The Chair: You may want to make reference to the date so that there's no confusion. OK? So that's the motion.

Ms. Wynne: Actually, I said at least 50 years.

The Clerk Pro Tem: At least; sorry.

Mr. Sterling: OK, fine.

The Chair: That is the motion. Are we ready for the vote?

Ms. Churley: No, a question on that.

Mr. Sterling: I don't know what this means. We know that in front of this committee somebody came forward and said they were going to have a constitutional challenge. I don't know what it means when we now try to deep-six the constitutional opinion of the Attorney General. I can't support this motion right now, but I'm quite willing to hold it in confidence until the next time we meet, when we have an opportunity to review the repercussions of what we're doing.

The Chair: Thank you for your comments. Any further debate?

1350

Ms. Churley: Yes, I wanted to ask for the implications if there's a vote on this and it passes. If that document, since it has been out there and anybody has a copy of that document and it is then used—I mean, that could happen, and if this committee decides to hold it for up to 50 years, there's no legal recourse, I assume, since it was accidentally released to this committee and was fairly out there for a while. So I'm assuming that if it's out there, it's out there. Personally, I have no problem. I understand what happened here, but I'm just saying, and the question is, if it's used, it's used. Is that not correct?

The Chair: Thank you for your comments. Do you have an answer?

The Clerk Pro Tem: Just to clarify, or perhaps to muddy it, the practice of committees branch with any document that's distributed, when we do our exhibit list, when we finish this bill—which is now—we will continue distributing that document, because all we have in front of us is a letter from the Attorney General telling us not to.

Ms. Churley: Oh, I see.

The Clerk Pro Tem: We will continue distributing it unless the committee orders us otherwise. I think what is trying to happen here is to have it ordered otherwise, whether we put it away and lock it or—

Ms. Churley: Why don't we have a different motion then that would, as Mr. Sterling said, prohibit you from distributing that document in the meantime?

The Chair: What was the motion? Did you hear it?

Ms. Wynne: Ms. Churley, you're suggesting there would be a motion to hold the document in confidence for a period of time and have another discussion about it; is that what you're suggesting?

Ms. Churley: I think so, yes, so that we're clear it's not distributed—

Ms. Wynne: OK. What period of time are you suggesting?

Mr. Parsons: Fifty years.

Ms. Churley: A hundred years.

The Chair: Can staff give us an indication—

Mr. Sterling: I would imagine a shorter period. Why don't you do it when the House comes back? Have the committee meet and talk about it at that point in time.

Ms. Wynne: To be discussed at the next committee meeting?

Mr. Sterling: Yes.

Ms. Churley: OK, I will add that to the—

The Chair: So to be discussed at the next meeting. In the meantime it's not to be released.

Ms. Wynne: Right.

The Chair: Whenever the next committee meeting is, then it will be on the agenda.

Ms. Wynne: The decision of the committee was not to release the document up until this point. So we'll continue that and we'll discuss it at the next meeting.

The Chair: So that's the motion. Any further debate?

Ms. Churley: Have you got that motion?

The Chair: If there is no further debate, I'll take another vote. Those in favour of the motion? To be held until—

Ms. Churley: Until the next committee meeting.

The Chair: OK, it carries. Everybody supports it.

I want to say thank you to all of you for your contribution, and to those who are not present. A couple just left. Some of you have been with us from day one. I thank all of you, and staff in particular, for your time. Enjoy the balance of the day.

The committee adjourned at 1355.

CONTENTS

Thursday 15 September 2005

STANDING COMMITTEE ON SOCIAL POLICY

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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
Ms. Susan Yack, legal counsel,
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