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Monday 31 October 2005

Lundi 31 octobre 2005

Speaker
Honourable Michael A. Brown

Clerk
Claude L. DesRosiers

Président
L'honorable Michael A. Brown

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LEGISLATIVE ASSEMBLY OF ONTARIO

Monday 31 October 2005

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

Lundi 31 octobre 2005

The House met at 1845.

ORDERS OF THE DAY

ADOPTION INFORMATION DISCLOSURE ACT, 2005

LOI DE 2005 SUR LA DIVULGATION DE RENSEIGNEMENTS SUR LES ADOPTIONS

Resuming the debate adjourned on October 25, 2005, on the motion for third reading 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 Speaker (Hon. Michael A. Brown): The member for Toronto–Danforth.

Ms. Marilyn Churley (Toronto–Danforth): Once again, I'd like to welcome folks from the adoption community tonight who are back here to hear what we have to say. We should thank them—

Applause.

Ms. Churley: Yes, applaud them for all their hard work, because they are the reason we are here tonight, and they are the reason I continue to be inspired year after year, even though I had located my son through Parent Finders, not through the registry. But these are the people who kept on me and made me—although I was happy to do it—bring these private bills forward. They are the ones who continue to educate the public. They are the ones who are the experts, along with, may I say—and I'm not even going to use up my full time tonight—the children's aid societies. I have to say that we don't talk about them enough. We talk about the privacy commissioner a lot, who definitely has some views but admits herself that she's not an expert in this area and indeed it's outside her purview.

What we don't talk about very much at all—and I don't know if people who have concerns or are opposed to it even bothered to look at what the children's aid society had to say about the desperate need to open up those records, because they are the ones who, over the years, have dealt with all the slow changes in the law and have had to deal with all the fallout and issues and problems around what we have now. So that is something we need to pay attention to.

I also want to bring up again and remind you about the genetic revolution. Dr. Philip Wyatt, chief of genetics at the North York General Hospital, says that the current adoption disclosure laws put the "health of more than 300,000 Ontarians at risk." We met some of those people, and I'm not going to go into details again tonight.

Fundamentally—and this is my last point—this is about human rights. I just want people to think for a moment about what happens after, or what used to happen after, an adoption. It's fraudulent. Supposing it were you, Mr. Speaker. You were born, and you were adopted right away. Your birth certificate would have been changed. Your real name would have been removed, and your adoptive parents' name would have been put on that. Adopted people are the only people we allow to be discriminated against in that way.

This is 2005. What we're doing here is catching up to most of the rest of the world. Yes, we don't have the disclosure veto; and yes, three provinces and a territory here in Canada have a disclosure veto. Mark my word, that will be gone soon. Western Australia, which is way ahead of us, as many other countries are, has just removed the disclosure veto.

That's the reality of what we're debating tonight. We're debating a human rights issue. We're debating the fact that there's a lot of misinformation out there, and we're debating the fact that this bill before us, as did all my bills, has a contact veto in there. These people sitting here tonight, their advice was: "Do not put a disclosure veto in here, because you continue to discriminate against some of us." In correcting a wrong, you don't continue to carry on with that discrimination. It's not fair. You think about it.

If you're newly married or moving in or whatever, and you're having your first child, knowing about all the genetic diseases there are today, you want to find out. It's a blank slate. You don't know. We take it for granted. You want to know, before you have that baby or while you're pregnant with that baby, what kind of medical history there might be. You try to get that information, and guess what? Even if it's a small percentage—which is always the argument given as to why it's OK to have a disclosure veto—supposing that's you. You're having a child and you cannot find out your medical history. That is fundamentally wrong.

1850

I'm going to finish with this: If the people here who are opposed to this really did take the time to read children's aid information and all of the other information

put forward by all of the groups here, and look around the world and see how well the changes are working with the contact veto—all of these things, you see, we know. We happen to have the advantage because we're so far behind. We can study what's happened in other jurisdictions, like England, which changed its laws in the 1970s: no disclosure veto.

There will be some scary stuff said here again tonight—I can see it coming—about that fateful knock on your door. Just remember that adoption orders prior to 1969 or so had birth mothers' surnames on them. People, since 1995, can get the adoption records. Not the birth certificate—that's what this bill is about—but the adoption record, the adoption order. From 1995, you can already get that—an adoptee, a birth parent. So what we're doing is correcting at long last a mishmash of really, really invalid, discriminatory law that's patched together piecemeal and is no longer working for anybody.

We are finding each other actually outside that. Even without the contact veto we aren't showing up at people's doors, because we're walking on eggshells when we're trying to reconnect and get that information. That doesn't happen anyway. For insurance, for those who have that concern, the contact veto is there.

I'm going to be listening to the rest of the debate tonight and perhaps I'll have another opportunity to say a few more things about this bill, and I look forward to finishing the debate and what's going on here.

Should I keep going? OK. There are some negotiations, I believe, going on here, so I will let them continue to talk.

I'm coming to the end of my opportunities to speak to this bill because, as you know, it's serendipitous that the feds didn't call an election yet, and I'm still here and able to—

Applause.

Ms. Churley: You're happy I'm not in Ottawa yet, aren't you? But really, to be here in this House when we're finally going to have an opportunity to actually vote on the bill for third reading and bring it into law is something that I thought perhaps I wouldn't have the opportunity to see. To have the privilege of being here to participate in this final debate and the final vote is really very, very precious to me, and I look forward to that vote. I believe it's happening tomorrow, if all goes well.

Hon. Sandra Pupatello (Minister of Community and Social Services, minister responsible for women's issues): Or tonight.

Ms. Churley: Or tonight, people. We don't know, but we'll see what happens for the rest of the evening. Thank you for this opportunity.

The Speaker: Questions or comments? Further debate?

Mr. John Tory (Leader of the Opposition): I'm still not sure, sir—and I apologize—when one is supposed to stand up and take one's turn, and when one is not, here. Having said that, I'm delighted to be able to take part in this debate and to talk a little bit about what I've learned about it as we've gone through the last number of months since this bill was introduced, which I think was the very day that I took my seat in the Legislature.

I voted in favour of this bill on second reading. I voted in favour of this bill because that is the stage at which one votes for approval in principle of the bill. The principle of the bill as I saw it, as I read it, as I listened to the minister talk when the bill was introduced, was more ease of access to information for birth parents and for adoptees. Indeed, I've had a number of friends who have gone through the process of trying to find out their own history and the identity of their own parents. The only association, in fact, I'd ever had with the issue in my life was as a professional, when I was practising law and on two occasions had a limited opportunity to help people who were at that time trying to find out more about their own history and background. So my only background was one where I was involved in helping people to achieve what the bill I think in principle was trying to achieve.

I should say as well that I was moved by, and paid attention to, the dozens and dozens of e-mails. I had no hesitation in saying to the media when they asked me what the preponderance of the e-mails I received in my office was on this piece of legislation. Many of them came from people who are from what the member for Toronto–Danforth referred to earlier as the adoption community, and they were speaking very strongly in favour of Bill 183.

I wondered for a period of time why I didn't receive any e-mails to speak of from people who had a concern of one kind or another about the bill. It was only—again, I've said this publicly; I don't think there's any point in being less than transparent about this—when the privacy commissioner telephoned me one day to talk about some of her concerns and observations about this legislation and to draw attention to the fact that she had in fact received hundreds of e-mails and letters from people who really felt they had no other way to communicate—because, of course, the very reason for their communication, their own history with respect to their experiences in this area, was that they were people who didn't want to reveal their identities. Their very concern about the bill was rooted in a privacy issue. They had come to understand that they had certain rights, and this bill was seeking to change that.

With the advent of those e-mails and those conversations with the privacy commissioner and others, I began to do what the Leader of the Opposition is here to do, together with my colleagues, which is to ask the tough questions about those kinds of things; to ask the tough questions that arose out of some of those e-mails, many of which I have now had an opportunity to read—of course, the vast majority of them don't have names attached to them; to speak up for groups who may well have felt left out as a result or that their considerations were being left out of the government's deliberations or the Legislature's deliberations with respect to this piece of legislation; and ultimately to do what I think Par-

liament is here to do, but to do in particular what I think the opposition is here to do, where there's any concern at all: to protect minority rights, especially given the huge latitude and the authority that is given to a majority government in our parliamentary system.

I think the question justifiably arises, what questions did we ask, which groups did we ask them about, and what rights did we inquire about during the course of the time that we have made inquiries in the House and since the time that I cast a vote on second reading in favour of this bill? I'll cover these in no particular order. I think they're just in the order, in some respects, in which they came to my attention as I was involved in a learning process about this bill.

Issue number one: retroactivity. I think that most people accept the fact that it is a fairly well established principle of our system that retroactivity is something to be avoided, in terms of retroactive impact of legislation. Indeed, if you read some of the comments—I had a chance to read them, but I don't have the time tonight to recite them—made by members now on the government side, from the Liberal Party, with respect to the lack of desirability of retroactivity in legislation, they were very harsh indeed in their condemnation of the previous government with respect to even the hint of retroactivity in legislation.

It was perhaps put best by Bruce Pardy, a law professor at Queen's, who submitted a legal opinion on a number of aspects of this bill, but he covered as well the question of retroactivity. He said, "Retroactive laws punish citizens for relying on rules which were in effect at the time of their actions."

Even then, I am willing—I can speak for myself, and I think that a number of the people in our caucus would be willing—to accept a measure of retroactivity in respect of the matter that's in front of us here, subject to some kind of safety valve, some kind of check and balance—that's such an important part of our system and of legislating in our system—which would allow those who relied on the rules as they were at any given point in time in the past, and those who may wish to continue to rely on the rules as they were when this affected them, to opt out of this retroactive application.

Let me make it clear, if it isn't already: I have no problem whatsoever with the provisions of this bill as it relates to adoptions that would take place today and going forward. I'm speaking on behalf of myself as a member of this Legislature. I have no problem with that. It is when you get into the zone of retroactivity, something that we choose more often than not to avoid in our law-making, that you get into a problem where you are altering retroactively the privacy rights of some people.

1900

Indeed, the only quote from the Liberal side that I am going to recite tonight is one that really sums up my own feelings on this to some extent. It comes from the Minister of Tourism, the government House leader, spoken in the House on May 12, 1994:

"In addition to this, I worry about the birth mother or the birth parents who have made a decision at an early stage in their lives, only to have, many years later when they've had a new life out there, made a new start, somebody knocking on the door and saying: 'Guess who's here? I'm here to see you.' It's a great disruption for that person's life."

The minister can speak for himself with respect to what he was talking about, but I believe he was talking about retroactivity and its particular negative impact on the person involved and the lack of a check or balance that applied in some respects to this retroactive application of the law, or, put even more simply, just the ability on the part of those who went through an experience based on a certain set of rights to stick with those rights as they are and as they were, so that people don't find themselves in a situation, as Professor Pardy described it, where the rules are being changed, as it were, after the fact, in the middle of the game.

I really wonder why, even as a major incremental step forward, we couldn't have gone to a retroactively applied opening up of this information, as I believe was the principle of the bill—to open it up and make information more easily available to people on all sides—but with a full disclosure veto for the retroactive cases with concerns.

Based on the evidence and the experience elsewhere in Canada, I think I'm right in saying that that would have meant that 97% of the files would have been opened, pursuant to the operation of this bill, and that information would have been made available to those who are looking for it on any side of all this, and rights to information would have been enhanced. But at the same time we would have respected and addressed the rights of the minority with a veto, a system where you have your privacy rights respected and don't have to beg for them or go to some extraordinary lengths to try to have them just respected by the government and by the Legislature of Ontario.

I would argue that that would have been a win-win. It would not have been a perfect solution—nor, I would argue, is this one—but it would have advanced the cause of making this information more readily available in 97% of the cases. For example, I would have been quite happy, again speaking for myself, to see that kind of arrangement in place, say, for a three-year period, with a review to take place after that, and we could see if this balancing of rights was working and whether we could afford at that stage to do more. That's issue number one.

I want to quote from one of the letters—I've read a lot of them—that the privacy commissioner received. This was letter number 32 that came from a birth parent. She's numbered them because, of course, most of them don't have names. She says, "The Liberal government is taking away my privacy rights by bringing in adoption disclosure retroactivity. I based my whole life on being told my file would always be sealed.… It is unbelievable they would go that far back to turn families upside down."

I think that what we have from the minister is really no assurances. I'm going to make some comments in a moment about positive things I've heard from the minister, but there are no assurances that we aren't going to end up turning the lives of these people upside down, notwithstanding her own statement, that I think was an acknowledgement of the fact that this law, as presently drafted, will turn lives upside down. As she put it in her statement introducing the bill, "These files have been sealed for 87 years." That means, by definition, that there are people who have relied on the fact that the files have been sealed for 87 years, and when they're opened, with no real opportunity for many of these people to come and make their case as to how their privacy rights are being interfered with, I think that is the circumstance in which letter number 32, the woman writing there, is saying it is going to turn her life upside down.

Let me deal with the second issue: namely, privacy rights. The right to privacy is a personal right. These privacy rights have been given in the past, and now, with the stroke of a pen, they are being taken away. Again, it speaks sort of to the issue of retroactivity, but it's a different, related issue.

I don't believe that it is up to a government or a majority party in government to do that: to take away privacy rights that have been granted with the stroke of a pen.

These rights are more fundamental than that. Again, it was put quite well by an adoptee who wrote to the privacy commissioner in letter 292. She said as follows: "The bigger issue is that the government has no right to disclose this information in the first place, as it tries to define who my parents are against my wishes." It would have been so much easier—not easy, but it would have been easier, fairer and more appropriate, in terms of our role here as legislators, to respect those rights for those who wish to preserve and to protect them. It still would be, because this bill hasn't yet been passed.

I'll read another quote from the letter: "Shouldn't the government be protecting my privacy rights instead of requiring me to justify why my private information should not be disclosed?"

Another letter, number 38: "I was promised this in a courtroom before a judge, represented by a lawyer, a frightened teenager who was still living the nightmare of an unwanted pregnancy. So when I was promised this, while on the stand in this courtroom, surrounded by people more learned than me, was I supposed to know that this promise had no legal basis, and would be discarded so willingly by the government decades later?"

Finally, from letter 272: "In those days, our word was our bond. This bill, even with its amendment, is a betrayal to the women that we promised to protect."

Those sentiments sum up, perhaps better than I could, the notion that we are seeing here a unilateral interference with, and lack of respect for, privacy rights that people had. These are their rights, which they should be asked to give up—if they're going to give them up at all—as opposed to being told that they're now being given up on their behalf by the government and by this Legislature.

The third issue is what I call begging for your rights to be respected. Whether it's the birth mother who was the victim of a sexual assault or incest, or the adoptee who was abused, or just someone who feels that real emotional trauma or harm will come to them if their most private secrets are retroactively caused to be revealed, why should people have to appear in any of those circumstances to beg for their rights? For that matter, if privacy rights are privacy rights, why should anyone have to appear in front of a tribunal and beg for their rights at all? These are their rights.

We have been given various, what I will call—because I believe that they are—vague assurances on this by the minister. It may even be that we could have been satisfied with some parts of the proposed process. I will say that I believe the intention that is in the minister's mind, from what I've heard her say, in what I'll call the more extraordinary cases—the cases involving what I think we would all clearly describe as extraordinary circumstances involving sexual assault and incest and so on. I believe that the process that she has described—in only the vaguest of detail—is intended to address those instances, albeit we have some serious, ongoing concerns about whether people are going to be required to appear there to plead for their rights. The minister has said many times in this House that they won't, and I take her at her word on that, but I think it underlines the point that we've made, which is that we could have been satisfied with this process as representing an answer to many of these cases but for the fact that all they were told is that it is a process that will be shaped and governed by regulations we have not seen, which are not drafted, which we will not be able to see for some considerable period of time to come, based on the answers to the questions that I tried to ask in the Legislature today.

The minister has said—and again, I take her at her word, and we were just chatting about it a couple of moments ago. She has given me some assurance that there could be an opportunity for someone like myself or members of all the parties—in fact, it shouldn't be about the Leader of the Opposition or any other one parliamentarian; it should be about all of us having a chance to participate in this in an appropriate manner. In the end, there have been no draft regulations, no really specific answers giving any kind of comfort or assurance. There has been no draft consultation; there's been no commitment to produce a draft after the bill is passed, if indeed it is passed by this House when the vote comes up, likely tomorrow; there has been no real consultation, no paper, no nothing.

I wanted to discuss, in the time left to me, what we asked for as a party, in terms of going through this discussion as we tried to address ourselves to issues of retroactivity, privacy rights and people having to beg for their rights. In no particular order, we asked for regulations governing who would have to appear where to plead for their rights. We asked, as recently as this

afternoon, that the minister might—all I asked her to do was to bring them forward before the bill was voted upon in the Legislature. I asked her to commit to bring them forward in an appropriate manner for review and consultation before the bill is proclaimed. That's what I asked this afternoon.

Hon. Ms. Pupatello: You can't do that.

1910

Mr. Tory: If the bill is passed—I asked you to bring it forward before it was proclaimed. If you tell me it can't be done—there are a lot of things people say can't be done around here, based on convention. If we wanted Parliament to work a lot better, we should stop saying that things can't be done and start to look for better ways to do things that involve all members of the Legislature. The bottom line, as evidenced by the minister's comment just now, is that that request was rejected.

The second thing we asked for was consideration of a disclosure veto on retroactive cases. Open the future files: I have no issue with that. I don't have; I haven't had any issue with that, nor have many other members of our party.

Interjection.

Mr. Tory: Open the past files—

The Speaker: Stop the clock. Minister, I'm going to need you to withdraw that last remark.

Hon. Ms. Pupatello: I withdraw.

Be honest, John.

Mr. Tory: "Be honest." I try to be honest all the time. I didn't even hear the previous comment, Mr. Speaker, but never mind. It's what we're trying to fix up around here.

In any event, open the past files but respect the rights of those who wish to continue to rely on those rights and the assurances and guarantees they were given in the past. That is what I described as the win-win scenario. That was rejected.

A court reference: We asked about that and said, "In view of the fact that there were serious concerns raised by various people about the legality of this bill, could we have an objective opinion rendered by a judge within a reasonable period of time and then the bill could proceed after that reference to the court?" That was rejected.

I believe that that, and some of the interjections of the last couple of minutes, are not Parliament as it should work. I believe there really wasn't any serious willingness to consider serious amendments to address some of these concerns expressed by the official opposition on behalf of many people and groups of people out there. I believe there is, to this minute, no willingness at all to let the public see the draft regulations.

This is a bill which the government itself chose to amend dozens of times. I've only been here a short time, but people tell me that the number of amendments made to this bill is very great indeed.

The Toronto Star editorial of October 27 said as follows: "Surely there are better ways to open the adoption process without trampling on individual rights and reopening old wounds. Until the Ontario Legislature addresses these issues, this bill should be firmly rejected."

I voted for this bill on second reading because I approved of the principle of what it was trying to accomplish. We've asked a lot of questions and we've made a lot of requests of the government since that time. I would like to be able to vote for it on third reading, and I hold out hope, even in the remaining hours, that this minister might decide that some of the points that we and others have raised are worthy of consideration. But the fact is that there hasn't been, really, any tangible indication of concern for these people and their rights. They are a minority, to be sure—I concede that point—but that's precisely why we're up talking about those people and their rights. If I thought that there was a real, sensitive, simple way someone could protect their own privacy rights under this bill or under some change that this minister would have seen fit to put forward in respect of this bill, then that would have resulted in a much different kind of approach being taken by this party when the time for the vote comes.

"Trust us," they say. "Don't worry; be happy," they say. "It will all work out in the end. It has worked out elsewhere." Too bad for the people we're really worried about.

The minister said, when she introduced the bill, that it was a result of a carefully considered balance that she had achieved in drafting the bill. I would say to you that if there had been the slightest nod, the slightest indication that they were going to respect us, respect the Legislature and respect this minority group and their privacy rights, I would vote for this legislation, but I don't really think that is what we have seen. Instead, we're getting what amounts to—with a couple of vague assurances otherwise—the back of the majority government hand.

The Toronto Star was right. In its present form, I don't think we have any alternative but, on this side, to reject this bill as it now stands. I say that with regret, but I say it nonetheless.

The Speaker: Questions or comments? Further debate?

Mr. Peter Kormos (Niagara Centre): I'm going to speak to this bill on third reading for a far briefer period of time than I normally would. Quite frankly, it's because I'm enthusiastic about the bill coming to a vote this evening. It has been a decade for Ms. Churley and folks across the province—

Ms. Churley: Longer.

Mr. Kormos: —who have pursued this legislation, and far in excess of a decade for so many of those same people who have, as adult children, sought to obtain what I believe is rightly theirs.

While I regret the fact that it took 10 years for the legislation proposed by my colleague the member from Toronto–Danforth to finally come to this point in the House, I don't regret that there's been a thorough debate around the issues. I'm not afraid, quite frankly, of the contra view, and I want people to understand that the contra view has been an important contribution to the

debate, because there are people who have concerns about the legislation and what it will mean to them. I don't think there is any of us who doesn't understand what some of those fears are. Those interests, in my view, have been thoroughly canvassed and spoken to by those people who have expressed concern about the legislation. I want to make that very clear. We should understand that members of this assembly, in any number of caucuses, perform a variety of roles, and I'm very pleased that the opponents of this legislation have had a voice in the course of the debate. I think that's incredibly important.

I look at this from a relatively simplistic—my critics will say, typical of me—perspective. One, I agree that there is a privacy interest which may well be a privacy right on the part, obviously, of a birth mother who has undergone what has to be—and I don't pretend to even come close to being able to identify with the pain, the sense of sacrifice and the tremendous love that has to accompany a birth mother acknowledging that somebody else is better equipped at that point in her life to care for her child. I don't begin to try to pretend that I can understand that incredible love and sacrifice by those women.

I'm old enough to understand a time in our history, provincially and nationally, when the stigma of youthful pregnancies, when the stigma of an unmarried woman being pregnant—and in hindsight, we reflect that it's just so sad, there were so many lost opportunities, because we allowed ourselves to be buried under this burden, to be forced to bear this incredibly naive stigma. I recall it from my youth, through my adolescence even. Regrettably, there are obviously some people in some places who would force that stigma upon people in those situations now.

But having said all of that, this is what I really believe: While there is, in my view, a valid privacy interest and, yes, in all likelihood a privacy right, there is a competing right in these cases; that is, the right of every person to understand who they are; that one's biological history, one's antecedents, are the property of that child, be she or he a youthful child or an adult—children are, too, parents—even in the senior years.

While I can't identify with the incredible pain and sacrifice, and love of a mother who acknowledges that somebody else is better equipped to care for her baby, I think all of us, if only through our life experience and the passions we've felt around who we are, who our families are, where we came from, why somebody has green eyes and why somebody has blue eyes and, more importantly, why somebody laughs the way they do or has a gesture or an affectation and then to understand that there was an uncle, a great-uncle, a grandfather or a grandmother who had that very same laugh or had that very same talent, the ability to paint beautiful pictures or sing beautiful songs—these are fundamental rights of every child, youthful or adult. This is the property of that child.

1920

So I say, yes, there may well be a right to privacy, but I believe also that that right to privacy is as much derived from the ongoing stigmatization about a youthful pregnancy or the pregnancy of an unmarried woman; that's what it's really about. If anything, we have to speak out loudly and clearly that whether it was our sister or mother or grandmother, 40, 50 or 60 years ago, or our sister today who becomes pregnant for any number of reasons or circumstances—we know how people get pregnant—it surely shouldn't be the source of shame or finger pointing. Good grief. As wonderful a thing as can be done is to create that life.

I believe that a person's identity, which includes information about their antecedents, which includes not just the hard biological data—because Ms. Churley has made a very clear and strong case about the right of a person to know what their health background is so that he or she can protect themselves from predispositions that are genetically bred into them—and not just themselves, but they can protect their children as well—and also to know who those people were.

It's for that reason that I support this legislation. It's for that reason that I join my colleagues in the New Democratic Party in having advocated for this legislation for a good chunk of time now. It's for that reason that I believe the non-contact provisions in and of themselves are sufficient.

I know this. I know that in 2005, there just aren't any secrets any more. Birth children have been finding their birth parents for years, sometimes in a context of an unrestrained process that can have less than positive results in contrast to a disciplined and orderly process.

I spent a considerable amount of time over the last few years—I have a wonderful, beautiful cousin. Her name is Kim Stifel. She's a couple years younger than I am. She moved to Florida with her mother when her mother relocated to Florida back in 1960. I spent a whole lot of time with Kim. She had come back up here to Niagara. She was born in Niagara region, where I'm from. We would be poring over city directories, because we had all the little clues. Kim, in relatively short order, with no high-priced private investigators, found her mother, found her brother and, bless everyone, it was a delightful reunion for everybody involved.

But surely a regime which recognizes the right of a child to know his or her birth parent—and that doesn't in any way displace the adoptive parents, because you understand they have important roles as well—does far more to recognize the dignity of the person than any restrictive regime which purports to protect an interest, which I say, after a whole lot of reflection, has to be secondary or subservient to the competing interest.

Yet it happens more than once. In our society, when you talk about rights, we have competing rights, and you either deny all parties their right or you have to very carefully, thoroughly and cautiously analyze those competing rights and determine whether one shall prevail. While I have listened to and understand the contra arguments, I am convinced that the prevailing right has to be the right of the child, the birth child, and for me, it's that simple and, quite frankly, that easy.

It has to be retroactive, because the fact is, it's irrelevant when you talk about "from this point forward." The whole world has changed so dramatically. We have open adoptions now. Quite frankly, we don't have the element of secrecy. In the rare adoptions that are being done in this country, we don't have the element of secrecy. There isn't the element of shame attached to the clandestine delivery—my God, those days were horrible; they certainly weren't the good old days—of a pregnant daughter off to some special place 100 miles away so the neighbours would never find out. We can't even come close to ever pretending to delight in those days or in those times or in those attitudes.

I think Bill 183 changes the culture dramatically and celebrates once again the strength, the courage and the love of those mothers who handed their babies over, knowing that those other people could raise their babies more effectively than them at that point in their lives. I think this is a good piece of legislation, which I'm looking forward to being passed on third reading and proclaimed.

The Speaker: Questions and comments?

Mr. Norman W. Sterling (Lanark–Carleton): I was interested in the member's points with regard to his belief that the child had greater rights than an actual mother. In that vein, I'd like to introduce Joy Cheskes, who is sitting in the members' gallery over here, who is an adoptee. She is one of the very few people in this province who is part of the process who has been willing to step forward. If you follow the previous member's logic, you would say then that Ms. Cheskes should be given the opportunity to block the disclosure of her personal information. This legislation does not allow her that right. So his argument is flawed in picking one side or the other in terms of this particular bill.

I apologize to Ms. Cheskes for not introducing her the other night when we were debating this bill. She's been here through thick and thin. Ms. Cheskes has been contacted by, I believe, over 100 adoptees and natural parents, natural mothers, who do not want to see this legislation go through. I was sitting with her when the first speaker was speaking, when she pointed to the group over here as the adoptive community. She didn't point over here to include Ms. Cheskes as part of the adoptive community, and she does represent a significant minority of people who want to have the right to a veto disclosure.

We must consider not only the people who have spoken in the past and who continue to speak now, but we also must consider the minority—in many cases, the silent minority—who we in this party are defending.

Hon. Marie Bountrogianni (Minister of Intergovernmental Affairs, minister responsible for democratic renewal): I'm pleased to speak on this bill and to support my colleague in helping us enter the 21st century on this issue. I'd like to remind the honourable members of the opposition that there are protections for those specific families that wish their privacy to be protected. We have more protections in this bill than existed in the past, in fact. That has to be applauded, and I applaud my colleague for that.

Let me speak to another bill I introduced when I was minister of children, and that was for more support for those adoptions that are occurring now within children's aid to mirror what is happening out in the private adoption agencies, where open adoption is just the way it is. Research shows that kids want to know what their past is. It doesn't mean they don't love the parents who raised them.

I have a daughter who's 14. She's beautiful, she's smart; I can't believe she's mine. A lot of family members can't believe she's mine. I'm thinking to myself, "Would I ever give her up?" Even if I found out that there's another baby somewhere else that perhaps could have been mine, absolutely not. You love that baby. People understand that today. People understand these issues today. There is protection against those who require more privacy. There is a respect for the research that shows we need to know where we came from and there's a respect for those young moms, those honourable moms who, with love, gave away their children, to know how they are today. There's a respect for that.

I applaud my colleague. This is the right bill. I'm so embarrassed when I hear people like the honourable Leader of the Opposition, who supported this, now go back on his word. This is more like abuse than anything else.

Interjections.

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Hon. Mrs. Bountrogianni: You can heckle all you want. I know what the right thing is here, and this bill is the right thing to do. I applaud my colleague, I applaud my government, and shame on you over there.

Ms. Churley: I'm listening carefully to the arguments—a particular name was mentioned here tonight and I acknowledge your presence—and I certainly don't dismiss those concerns that are brought forward. I guess my argument would be, because I do want to address all the concerns, including yours, is that—and we've said it repeatedly here. I come at it from the perspective of a birth mother, and I know that that is different from the adoptee. I can only relate to my son and his experience in actually having my name. I guess that is what this issue is all about when you're trying to balance and weigh it all. "Churley" is a very uncommon name. I used to be a minister responsible for elevators and my name was in every elevator in the province, and he used to see my name. He could have come down to my cabinet office and declared, "I'm your son." I wouldn't have minded, but I know that there are some who would have, and I recognize all of that.

That is indeed what we are talking about here, that over the years the processes that exist now mean that it is fairly likely—and it's happening more and more. We all know people on all sides of this. They're finding each other through these other methods: through the Internet, because it has exploded these days; through having the birth mother's surname on the adoption order and being

able to get that not just from your adoptive parents but, since 1995, being able to quietly write in and get it, whether you're an adoptee or a birth mother. Now you have that contact veto in there as people are finding each other, which doesn't exist now. I acknowledge that there are concerns around this on both sides. The reality is, people are finding each other. There is a protection in this bill that doesn't now exist.

Mr. Frank Klees (Oak Ridges): I just want to rise really in response to a comment made by the Minister of Intergovernmental Affairs; which I think, in this place, is uncalled for. To refer to honourable members in this place who happen to disagree with her on a position and call on them in the way that she did, I think shows great disrespect for the process in this place. In doing so, she refers as well to an officer of this Legislature in the same tone. I remind her that an independent, impartial officer of this Legislature, Ann Cavoukian, the privacy commissioner, shares the Leader of the Opposition's view on this very issue. It shows a disrespect for members of this place. It shows the arrogant attitude of this government, that everyone else is wrong and they are always right.

Speaker, I submit to you that if it has come to this place where a minister of the crown presumes that any member who proposes an alternative or proposes an improvement to legislation—that that is a shameful act. This government has come a long way in the wrong direction. I think if anyone had honour, the minister would stand in her place and withdraw her comment directed to the leader of the official opposition.

The Speaker: Further debate?

Mr. Cameron Jackson (Burlington): I'm pleased to be able to comment in the House this evening on Bill 183. In my 21 years in the Legislature, I have had occasion to speak in this House on at least a half-dozen occasions. And those who bear witness to Hansard would know that I happen to be someone who feels very strongly about the inherent value of repatriating families, the exchange of information, and that there is an important role for government to make sure that that process is done with the greatest degree of sensitivity and with the greatest understanding of its impact on those families and individuals it affects.

Again, for new members of the Legislature, you may not have had the same number of cases come through your constituency office as, say, Marilyn Churley has or I have. I've assisted families to find family members. I even had two sisters who had exactly opposite experiences with the same mother. I learned a lot from adoptees and birth parents in their struggle to retain a degree of their identity and to connect something that they have always felt was missing inside of them. So I feel very strongly and have very strong opinions about how that should be done.

I've also put on the record that I'm not having as great a deal of difficulty with retroactivity, even though the principle is a very awkward one in our society and it's a very difficult one, legally. Even our federal charter makes commentary in its short, 20-some-odd-year history that the issue of retroactivity has to be dealt with very carefully. When we're dealing with social policy and with high-risk, emotional responses, we should proceed carefully. That does not necessarily mean we should reject retroactivity simply for its case, but for those who express concern about retroactivity, we at least have to listen to their case.

It's apparent after months of public hearings, and—I'll say it tonight—after 45 amendments that I tabled to this legislation, almost all of them rejected, after that effort to try and amend and make this bill better, without disrupting the principle of retroactivity, we still have a government willing to proceed and go forward, in spite of the fact that they've been given all sorts of evidence and caution that this bill, in the present form we're being asked to vote on tomorrow, will not only be challenged in our courts, but most of the legal opinions—in fact, we did not get a single legal opinion that said that this legislation would be sustained on appeal. With all of that evidence, why is it that this government is proceeding with a bill that we've got clear legal evidence will be struck down? And why, more importantly, did this government, given the opportunity to strengthen and make this bill better, fail to even try?

That's been bothering me for some time. It bothers me because I have several constituents who want this to go through. I have several constituents who are desperate about the unintended consequences that this legislation will have on their lives, on their families and on their future health. From that perspective, I tabled a substantive number of amendments. I'm going just to briefly hit on a few that have not been mentioned at all in the debate, but that, in my view, as I listened carefully to the comments of people both pro and con for this legislation, were issues that they said needed to be left or put into the bill to make it better legislation, to make it work better. Yet today we stand here with this legislation and not one privacy commissioner in Canada, either nationally or in any province, supports it, and they have serious legal concerns about its validity and its impact. They are clearly signalling that this will ultimately go to the Supreme Court to be tested.

We have not one editorial comment from any newspaper. The media normally like to support this government in just about anything it does. There was not one editorial support for this legislation in the form in which it was proposed and the form in which it remains in front of us tonight, unamended.

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I believe very strongly that we should have made some amendments here, and in doing my homework I did one of those simplest of things. It occurred to me that after weeks of the minister getting up and trumpeting and parroting the fact that New South Wales has done this piece of legislation and it's just a wonderful, magnificent piece of work, I thought, "Fine." I went on the Internet, called up the legislation and read it through. I was shocked to learn that there were a substantive number of protections put in the New South Wales legislation, so I

did what any normal person would do: I copied them down. I thought, "Well, if the minister thinks they're so wonderful in Australia, surely she must want to transport those elements and bring them here to Ontario, along with this principle of retroactivity"—and this other issue I'll get to in a moment, the no-contact versus the disclosure veto.

This bothered me. These weren't the Conservative Party amendments; they weren't Cam Jackson's amendments; this was the legislation the minister held up as one of the best pieces of legislation in the world. The truth is, it's the only legislation of its type in the world, but that's a matter of record. Fine; if the minister wants to emulate the best legislation, in her mind, in the world, then surely she shouldn't have cherry-picked that legislation to come up with something so narrow and so un-Canadian that it fits into our judicial context of a Charter of Rights and Freedoms to protect individuals in this country.

Why would she do that? Why would she put this legislation, let alone her government, through all this, if at the end of the day it's in the courts and our adoption community is no closer to access to their loved ones or those whom they seek to be connected to, and this will cause further delays? Only the minister can answer why she believes her way is the only way, in spite of compelling evidence.

I'm not going to read in all the legal opinions. We had strong, emotional, cogent, legally researched input during the several days of public hearings. Clayton Ruby said, "I'm telling you right now, ladies and gentlemen, if the bill goes through this way we're taking it all the way to the Supreme Court, and my client to my left, an adoptee, is adamant that his rights be protected." So, two, three, maybe four years from now we're still going to be debating this, because we will not be able to give full force and proclamation to a piece of legislation that's going to be challenged in our courts.

One of the things that is missing here that nobody wants to talk about is the fact that this government in this legislation is collapsing and stepping away from any responsibility that the current community and social services ministry has in terms of the process of record-keeping, assisting with matches and all of those procedural efforts. So I asked some questions: "What is it that you expect to do?" According to the minister, again, they're going to be collapsing this portion of the ministry, and this will become now a budgetary savings for the government. That was the answer I got. I said, "OK, children's aid societies have records, and I have concerns about crown wards." Frankly, in New South Wales they have concerns about crown wards, and it's in their legislation. Do we have it in our legislation? Absolutely not. I do not know why we don't, but again, I agree with the member from Welland that the child who was put up for adoption should have some unique rights here. If I were a child put up for adoption and I was physically molested by a family member or someone, I would like to be able, as an 18-year-old in this province, to determine when my information gets released and to whom, and to what degree I am protected. Those amendments were rejected out of hand, and not only that, but I asked in the legislation here—our caucus tabled motions—that children's aid society records should be made available to an 18-year-old so they could make their own determinations, and again the government rejected them.

Now, imagine this scenario—which was presented to the committee through the hearings: You're a young woman, and as a child you were sexually molested in the most gruesome of ways and yet you've suppressed all of this. You're not totally aware of it, but the state has the responsibility to at least inform you, "(a) You were adopted, and (b) you were adopted for these reasons, and this is the truth about what you're going through." Now, children generally start having problems with this as children, but it becomes more acute as young adults. There's no mechanism in this legislation whatsoever to assist that very small group of individuals (a) to bridge them with the information, or (b) to provide them access to counselling. Even the adoption community came to me and said, "Cam, could you put in this amendment?" Right now, you can get access to counselling. The government is eliminating all this. In New South Wales, you can get counselling. People are going to need counselling as a result of being told, "As of a certain date, your entire information that you thought was secret and held sacred is going to be released." But what about those people who have no idea of the circumstances which caused their adoption? Some of those stories are terrible and they're horrific.

I asked for something that was simply laid out in the New South Wales legislation: that, for a person who really doesn't want anyone to have their information, at least give them six months to a year so that they can go out and start telling their family members, they can get some counselling, they can share it with their husband or their wife and their children. There's nothing in this legislation. This was all rejected by the government: something specifically that a large number of people in the adoption community said they would support.

This one upset me: when the government, and in particular the minister, said that under no circumstances was any woman ever promised that by putting her child up for adoption, those records would be kept secret. If you've ever done any work with the Catholic Children's Aid Society, you know that that was part of the process; that was part of the promise. Some were done in a courtroom, some were signed, and the most difficult decisions were made by women. I can only imagine how difficult a decision would be to determine whether to have an abortion or bring a child to term, and part of that decision would have been made by some of these women, they tell us, as a result of the promise that the child would be allowed to be adopted and there would be no record kept.

I will close with my major concern with this legislation, and that has to do with the very small group—and I want to put it on the record. When we talk about a

disclosure veto on this side of the House, we take it very seriously. When we did our research in New South Wales, we found out that fewer than 5% of adoptees or birth parents seek a disclosure veto. So we are not talking about a lot of people, which is why I'm not having a great difficulty with the retroactivity of it, and fuller access and disclosure. But I am having a problem for that small, small percentage of Ontario residents who have very legitimate reasons for not wanting disclosure. It has to do with a woman's right not to be revictimized in this province, and I feel strongly about this.

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My wife, Elaine, and I brought three daughters into this world, and all of my work has been primarily focused on trying to understand what the world would be like for my three daughters. I say that, for women who were sexually assaulted or physically abused—and it is a disproportionate number of them; we know that. As children, as young adults, as adolescents and as adults, women are disproportionately victimized.

I helped to create legislation under the Victims' Bill of Rights that says one basic principle: A woman has the right not to be revictimized. In other words, she has the right not to have to go before a tribunal and relive the circumstances of her victimization. That is entrenched in our law. It's also part of the law that will be taken to the Supreme Court when this legislation, Bill 183, is challenged.

Women have fought hard to win the right not have to go back into civil court after there has been a criminal conviction in a rape. Now we have a process here that says that a woman who was raped or abused has to go and plead her case—not how badly she suffered during that rape or that assault, but she has to prove to a panel of civil servants in this province—

Hon. Ms. Pupatello: That's not true.

Mr. Jackson: You never answered the question, Minister. If you'd have answered the question—

Interjection.

Mr. Jackson: You left it open. You were asked the question, and you didn't answer the question. Your lack of support for women is well documented on this and other issues.

Minister, these women should not have to go forward and plead their case before a group of civil servants or persons hand-picked by the minister. You can fill in your own blank, Minister. But you do not in this province ask a woman to say, "I have to explain to some stranger why I think I'm at risk emotionally if I have contact with this other person."

Hon. Mrs. Bountrogianni: You've got a lot of gall talking about women.

Mr. Jackson: You should be standing up and defending them, the former minister who did social policy for a while in this province. The fact of the matter is that this legislation violates that simple principle for women in this province. It is unconscionable for a government to stand there and do that to women.

Now, again, as I've said, this does not affect a large number of people, but why would we create a process when we had amendments available to address this issue? The no-contact veto, we believe, will not work. It hasn't worked for women who are the victims of stalkers. Peace bonds and no-contact orders are meaningless in the province of Ontario. In fact, if you call the police to report it, they'll say, "You should leave the premises on which this individual is. We might be able to go and charge them, but at this point, we recommend that you leave." That is the history of no-contact provisions.

We've also indicated that it should include members of the family. Under this legislation it's all right, under a no-contact provision, to go contact the birth mother's husband or brother or sister.

You can play with the statistics all you want, but this legislation, in its current form, falls short of the kinds of protections that Ontarians deserve in order to advance the agenda for adoptees and birth parents in this province so that they can be repatriated, so that they can make matches, so that they can be connected, and so that they can share medical information. With the government withdrawing its support for the province to assist these families, and with families left to fend with this question in court, I feel the legislation will not serve the province of Ontario.

The Speaker: Questions and comments?

Ms. Kathleen O. Wynne (Don Valley West): I sat on the committee that heard the hearings on Bill 183. It stuns me to hear some of the non-arguments coming from the other side. The reality is that right now there is no framework for protection in place for either birth mothers or adoptees. What this legislation will do is, in a balanced way, put those protections in place.

We know that there are competing interests in this situation. We understand that, and what this government is doing is deciding on the side of openness for people to have the information that they need to get on with their lives.

We also know that there are many members on the other side who agreed with this bill. They believed that is the right direction. What we are hearing tonight are men who are looking for a reason to vote against this bill because the far right of their party has taken them, has captured them and has convinced them to make misogynist and anti-openness arguments—

Mr. Garfield Dunlop (Simcoe North): You're making this up.

Ms. Wynne: No, I'm not making this up. What I'm doing is saying that the leader of that party agreed with this bill, and he has been taken over by the right wing of his party and he's looking for an excuse to vote against this bill. In my mind, that is not the way we should be doing politics. We should be looking at the merits of an issue and deciding what the balanced view is, and that's not what is happening here. What we hear are opposition members who agreed with openness, agreed that people needed to have information—and, yes, there is a debate about exactly how that should be done. We've put pro-

tections in place. We've put in the no-contact veto. You can get a disclosure veto if harm can be proven.

But openness is what Mr. Tory agreed with, and he has changed his mind because the right wing of his party has decided that that's not the way to go. I think we all have to pay very close attention to that as we move forward, because if we're going to have a debate in this House, we need to know where people stand and where they're going to stand on a balanced issue like this one.

Mr. Sterling: I've heard some pretty silly arguments with regard to the motives behind our party and our stand on this particular bill at this juncture. I thought the Leader of the Opposition put very, very forcefully today where our party is on this bill and the reasons, notwithstanding what the member opposite says.

It's odd that every editorial board in Ontario disagrees with this—

Hon. Ms. Pupatello: That's not true, either.

Mr. Sterling: Every major one.

The Speaker: Minister, you need to withdraw.

Hon. Ms. Pupatello: I apologize. I withdraw. It's inaccurate, though.

The Speaker: Minister, if you want to stay in here—we're not going to do this.

Hon. Ms. Pupatello: I withdraw.

The Speaker: The member for Lanark–Carleton.

Mr. Sterling: The tolerance and the arrogance on the other side is really quite unbelievable on a very, very serious subject.

My primary reason for standing was to thank the member from Burlington for his participation in this process. He worked very, very hard during the committee hearings. He knew as much about the bill as any member of the committee. He worked hard to put his amendments together—he put 45 amendments together—and three were successful.

Notwithstanding that, this bill as it stands, as mentioned before, is a mess. That's because virtually every section—probably 80% to 90% of the sections—has been amended by the government, as their policy changed and as we went through the process. That doesn't mean that they are a flexible, listening government; that means that they were confused at the beginning and they are confused now as to where they are going.

I think we owe Mr. Jackson a great debt of gratitude not only for his amendments but for pointing out the number of holes that a truck could drive through with regard to this legislation as it was introduced in this Legislature.

Mr. Klees: I also want to thank the member for Burlington for his very reasoned submission to the House and for his work on committee. It was indeed thoughtful. It provoked a great deal of thought, certainly among our own caucus members.

With regard to the comment from the member for Don Valley West, she may well have been a member of that standing committee, but she obviously was not listening. I want to read into the record a comment made by Clayton Ruby in his submission on the issue of contact veto that she refers to: "A contact veto is much like the stalking laws, the criminal harassment laws. We have them on the books, but each of you in your riding office has heard cases, as I do in my office regularly, of women who say it doesn't work. The police can't enforce it; there's not enough manpower. No one can track down the anonymous phone calls, the late-night visits. That's not an adequate substitute for what privacy is. Privacy is the right to choose whether information about you gets disclosed or not, not just to the world but to anyone other than yourself."

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These are the very substantive issues that we are attempting to bring forward to this government. As I watch and as I listen, I'm dismayed at their inability to grasp this one fundamental concept, and that is the concept of fairness to that small minority of people who have serious concerns about the impact of this legislation on their lives. We'll continue to do what we can to the closing hours of this debate to try to get the government to understand this important issue.

Mrs. Liz Sandals (Guelph–Wellington): I'm glad that the word "fairness" was just mentioned, because one of the things which has always been a bit of a mystery to me in this debate is the fact that we can talk about being fair to the mother and to the birth father and to the adoptive parents, but what we rarely seem to talk about is fairness to the actual adoptee, to the baby. The baby was not a party to any agreement to seal the records. The baby had no way of saying, "Eighteen years from now, I might like to know what's going on." The baby was not a party to the agreement; it couldn't have been. So what we are trying to do is to say that the baby, who's now an adult, has some rights in this equation as well. We need to be fair to everyone.

I'd also like to tell you a story about a friend of mine, who didn't know that she was adopted until one day somebody showed up at her door and said, "Hi, I'm your birth sister." Now, as it turned out, she was ecstatic to find that she had this whole family. It sorted out a whole bunch of things that she'd never understood.

The point is that in the current regime under which we live in Ontario, the records aren't really sealed anyway because anybody can show up on anybody's doorstep and say, "Hi." Even if the scheme isn't 100% perfect, even if some of Clayton Ruby's theories are borne out, we will at least have a mechanism which we have never had before for people to indicate who wants to be contacted and who doesn't want to be contacted. This is a vast improvement over the current regime.

The Speaker: Response? The member for Burlington.

Mr. Jackson: I want to thank everyone who has participated in this debate. I want to put on the record for Ms. Churley from Toronto–Danforth how much I admire the work she has done in this area. Like in all causes, it takes individual champions to move the agenda.

What I find difficult is that, when faced with opportunities to make some amendments that would have made this bill better, made it more like the New South Wales

example, they were stonewalled and there was a fear that they would appear weak as a government if they did any simple amendments, like retaining the option to provide counselling. Now you're going to have to go and beg twice; you've got to ask, "Can I get some support here?"

I could go on with more issues that I thought could have been approved. So I feel badly that this legislation will get a legal challenge, and the challenges are not going to come, as the member for Wellington has raised, from birth mothers; they're going to come from adoptees. That's who's here today in the House, an adoptee, a child adoptee. That's who Clayton Ruby is representing: a child adoptee. These are the ones who are indicating that their rights are being so severely violated.

I just simply want to close and thank all members of the House, even the House leaders, for providing some additional time for public hearings. However, adding more time to public hearings is meaningless if it doesn't result in at least some outward demonstration that we have learned something additionally and we have amended this legislation. My fear is, that did not occur.

The Speaker: Further debate?

Mr. Klees: It will come as no surprise to anyone in this House that I am opposed to this bill. And in the time I have available to me, I will, for the public record, state my reasons. I will provide some practical examples of the harm this legislation will bring to innocent citizens in this province, and I'll attempt to impress upon my colleagues in this House the far-reaching implications of the proposed legislation on the principle of fundamental justice guaranteed in our country's Charter of Rights and Freedoms.

Honourable members who have heard me speak in this Legislature before, and in my remarks that I have made in past debates on this legislation specifically, will know that I am intimately familiar with the adoption process. My son, who is 23 years of age, was adopted as an infant. He has been aware of his adoption from the time that he was able to read, because we spoke to him about adoption. He was aware that he was a chosen child, and he was given every opportunity to feel very much a part of our family. There is no difference between my feelings as a father toward my son and the feelings I have toward my daughter, who is my daughter by birth. My wife and her three siblings are all adopted, and my wife went through the reunion process with her birth mother.

So I think I have a good sense of, first of all, what the practical challenges are of reunion, because my wife went through that process. I have a good sense of the fact that that process needed to have some improvement, that there were some unnecessary delays and that there were some areas of that process that clearly, as with any other process, can stand improvement. I also am very familiar with the emotional stress that one goes through wondering about one's past, wondering about one's roots and having a desire to make that connection.

I speak to this legislation, not from a theoretical perspective, not from a strictly legal perspective, but I have that first-hand, practical knowledge of the process. Lest there be those who charge that my personal experience should be set aside in the interest of a more objective assessment of this proposed legislation, I also bring to this debate the appeals of a long list of constituents who have brought their concerns to my attention over the last number of years since I've been a member of the Legislature, and especially more recently, as this legislation was tabled in the House.

In addition to that, I also participated in the public hearings, and I also heard the appeals coming before the standing committee of this Legislature on behalf of those who were advocating in favour, as well as those who appealed to the Legislature to please take into consideration their personal circumstances and their right to privacy. That right to privacy is a right that every citizen of this country has. It is a right that they have under legislation, under the evolving common law in this province and under the Charter of Rights and Freedoms.

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So I oppose this legislation for the following reasons: First and foremost, it offends the right of privacy and for that reason alone should be rebuffed by this Legislature. In the three other provinces in this country where retroactive legislation has been adopted and placed on the books, all three of those provinces provide for a disclosure veto, and there's a reason for that. The reason, I submit to you, that British Columbia and Alberta and Newfoundland have done so is because they in their deliberations found out very clearly that it is in fact an issue that would face a charter challenge and that the legislation they were bringing forward would not serve the very people who were advocating for it because, as my colleague had said earlier, this legislation will be challenged. The challenge will be taken to the Supreme Court, and during that entire period of time, the very people who are seeking the kinds of reunions they were hoping to have under the legislation will not be able to because of the ongoing challenge.

I want to commend Ms. Ann Cavoukian, the Information and Privacy Commissioner of Ontario, for her strong stand in opposition to this bill in its present form. She, as an independent, impartial officer of this Legislature, has expressed her opinion that not to adopt a disclosure veto for past adoptions "would be to ignore the wishes of an entire segment of society: birth parents and adopted persons who were once promised privacy, who still want it and who have governed their entire lives according to that assurance." That quote is taken from Hansard, Wednesday, May 18, 2005.

In a letter to the National Post dated June 16, 2005, the privacy commissioner stated the following: "It is clear that since 1927 the statutory framework in Ontario has been predicated on confidentiality. In reliance on this statutory framework, at a minimum, there was a clear understanding or social contract that created an expectation of privacy and confidentiality to many of the parties involved. Such agreements should not be revoked retroactively."

In his submission to the standing committee on social policy on May 18, 2005, Clayton Ruby supported Ms. Cavoukian and her call for a disclosure veto. I quote Mr. Ruby: "It's required because the Constitution of this country in its Charter of Rights requires it...." He went on to explain that there are three aspects to this. I will again quote Mr. Ruby: "[T]he Constitution guarantees fundamental justice and what's called 'security of the person.'" He referred to a recent Supreme Court decision that records that are of an intensely personal nature must be entitled to a constitutional right to protection.

Mr. Ruby referred to section 8 of the charter, under which a Canadian citizen can expect privacy rights created by previous legislative schemes where people had an expectation that this kind of information would, in fact, be kept private. Mr. Ruby made the statement very clearly: "That creates a right of privacy." I agree.

To that end, let me read from the health and law privacy and access to information sections of the Ontario Bar Association submission to the standing committee, dated September 13, 2005. In their submission, Mark Hayes, the chair of the OBA privacy section, and Lonny J. Rosen, chair of the OBA health law section, refer to the committee the long-established privacy expectations as reflected in the current Child and Family Services Act, which states in subsection 165(1):

"Despite any other act, after an adoption order is made, no person shall ... permit the inspection ... of information that relates to the adoption and is kept,

"(a) by the ministry;

"(b) by a society or a licensee; or

"(c) in the adoption disclosure register."

This is in our current statute. There is a very clear expectation, and there was and has been a very clear expectation on the part of individuals who entered into an adoption arrangement in this province, that those records would be kept sealed.

I oppose this legislation because, by allowing it to be enacted, I believe it will be contributing further to an already existing constant erosion of trust and confidence in government. This effect goes beyond those currently affected by this legislation. If government can, by its simple will, in response to a lobby from a very focused group, introduce legislation that by the stroke of a pen will rob individuals within our society of confidential and very sensitive personal information, what is next? What can citizens of this province, what can Canadians believe and trust will be kept confidential? I believe that what happens to this legislation is indeed fundamental to life as we know it in this province and in this country, and that's the reason that this legislation will be challenged in the courts, and so it should be.

I want to say again that I will be the first to support the importance of opening up records, of ensuring that adoptees and adoptive parents and parties to the adoption have the right of timely access to information. However, what I will stand firm on is the insistence that the right to privacy of Ontario citizens be protected and that there should be a disclosure veto in this legislation as there is in the legislation in the other three provinces that have brought similar legislation forward. That is all we're asking for. I do not understand the minister's insistence on moving forward without that fundamental issue being considered.

I'm opposed to this legislation because of the human tragedy that it will bring to families. I look at the people in the gallery and I find it puzzling that when statements like this are being made, there is a sense that somehow we just don't get it. I ask them, and I ask members in this House, to simply place yourself into the shoes, into the circumstances and into the lives of the men and women who indeed have serious emotional issues with what this bill proposes, and to put aside, perhaps, for one moment—just for one moment—the incredible work that you have been doing in the interest of opening up disclosure and just give one morsel of consideration to people who are human beings who are deathly afraid of the consequences to their lives. Can you not accommodate them? Can you not accommodate them for their concerns, for their emotional concerns? I would expect that in the interest of humanity we would allow that to happen. As was said before, only 3% of individuals in other jurisdictions where the disclosure veto is in place exercised that. That, I believe, would be indicative of a responsible public policy. That's not what we have here.

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I'm concerned that some of my colleagues seem to know very little about this issue, and yet they'll be voting on it. I hear colleagues stand up, even in their debate, and say, "What about the rights of adoptees?" The member from Guelph−Wellington stood up in her response and said, "It's fine to protect the rights of adults. What about adoptees, the children who had nothing to say about what happened at the time of the adoption?"

Let me read just one example of someone who is an adoptee, the kind of person that the member from Guelph−Wellington was speaking about. In her letter to me, she said:

"Dear Mr. Klees,

"I'm writing to you today to thank you for your efforts in the House today to protect my rights as an adoptee. I was adopted at birth because of the death of three older siblings at the hands of my natural parents. To be very honest, the fact that my personal information could be released to these people without my permission terrifies me."

What is it that causes us to ignore the plight of people like this?

I see the lady in the gallery. She's been laughing through this entire thing. I tell you honestly that this is not a laughing matter for any of us, whether we're observing this either here in the galleries or at home on the television, or whether we're members here. The reality is—

Interjection.

Mr. Klees: No, the reality is that this is very, very serious. We have a responsibility in this Legislature to

ensure that we are not representing just those who perhaps have been lobbying for this kind of legislation for many years—and to their credit, they have come a long way; in this legislation they have what they have been lobbying for—but simply advocating on behalf of a minority of people in this province who have serious issues with this legislation. We are asking that this government take their plight into consideration, apart from the legal issues, apart from the issues that relate to fundamental privacy rights that all of us have come to expect would be a natural right in this province.

This government is ignoring that appeal. They have the right, and they have the numbers; this legislation will pass. They've had all kinds of opportunities to consider submissions from some of the brightest legal minds in this country. They have had an opportunity to hear from those who are weak in their circumstances, and people who don't have the ability to organize because, by even expressing their concerns, they would be exposing themselves and exposing their circumstances.

The only people they have to advocate for them is us. And we're not saying that the entire legislation should be thrown out; we're simply saying, "Give us one amendment."

I want to close by making an appeal to this government one last time, and that is, very simply, to respond to the challenge from an officer of this Legislature: Ann Cavoukian. In her submission, she has asked for one thing and one thing only: to allow the principle of fairness and equality to shine through this legislation. There's only one way to do that, and that is, to make room in this legislation for a disclosure veto because, in that sense, you will recognize the fairness to those people who have serious concerns and who would be harmed by this legislation; equality, because it puts that minority on the same footing as those people who have been advocating for the openness that we see in this legislation.

Fairness and equality: two principles that should be in every piece of legislation that this Legislature passes. It's missing in this legislation and, for that reason, I will be opposing this legislation when it comes to a vote.

The Speaker: Questions or comments?

Mr. Kormos: Very briefly, because I am anticipating that this debate is coming to an end. I want to apologize to the staff at the Legislative Assembly because this is Halloween and a whole lot of those folks might have wanted to spend time with their kids or with kids in the neighbourhood—

Ms. Churley: Or our grandchildren.

Mr. Kormos: —or their grandkids.

So I apologize to them for us—we in the chamber, compelling them to work on an evening that many of them would have otherwise spent with their kids. But sometimes these things happen. We'll try to make sure it doesn't down the road.

Hon. Ms. Pupatello: What was really important about this last speaker—and I have to give him full marks. I believe that he is genuinely concerned about individuals who may come to harm while we in Ontario are changing social policy. This is really important for all of us to acknowledge.

I am obviously voting in favour of this bill. I support this legislation; I want to see this happen. We have to be very respectful of individuals who may come to harm because of it. That is why we have spent an inordinate amount of time. We have gone out of our way to be sure that the legislation is balanced. All of the work is going to begin when we do our regulatory work, and the members opposite know this. I have given this commitment to the Leader of the Opposition personally on numerous occasions, that we will have him sit down with us and tell us what he would like to see in regulations, albeit, yes, it won't be a disclosure veto. I acknowledge that. You cannot have, carte blanche, disclosure vetoes because people feel like it. Every time you have one of those, there is an adult on the other side of that equation who has been denied rights to their information for a long, long time, and we have to right that balance. We've got to bring balance to this issue.

We have said that we will have a board, who will be experts—not you and I, legislators who are going to determine these personal issues for people, but people we will appoint who will be good at this job, to bring balance to the right to maintain and receive a disclosure veto, where appropriate. We have suggested repeatedly that we are prepared to work with opposition members, members of the public, many of whom we've already started working with in these discussions about what all of those systems would look like, and it's important to acknowledge this.

We are going to have a bill that has balance. I hope it will be a law that is going to bring balance. It is about the right to know; it is not about the right to a relationship. We will insist on this as we move forward from here on.

Mr. Sterling: The question is about balance, a balance between what we have promised people in the past with regard to our laws, our processes, and what we are going to allow now and into the future. The arguments put forward by the government side that this is an equitable balance don't, I think, stand the test. That has been proven by the fact, as the member has indicated, that every privacy commissioner from across Canada, including the federal privacy commissioner, and every major editorial board has condemned this piece of legislation as not being a fair balance. And virtually every lawyer who has appeared in front of the committee, every legal expert, every law school, has said, "You can't do this. This is not fair to our system."

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We heard a lot about the adoptees being very anxious for this information, and that is true. I believe that the majority of reunions will be happy. I would hope that the greatest number of them will be happy, but there are reunions that are not happy; there are family situations which are not very nice. To say to people who have relied upon the law in the past, to say to them now, "We're going to pull the rug from underneath you, even

though you made a decision 10, 20, five years or one year ago, with regard to your conduct." It just doesn't muster. It's unfortunate: The government had a chance to go forward with this legislation. I just don't think it will stand the test of time.

Ms. Churley: Because this may be the last time I'm going to speak in this place about this bill, because I understand that the last speaker has spoken from the Conservative Party—am I wrong on that?

Mr. Dunlop: No.

Ms. Churley: And I did miss trick-or-treating with my grandchildren tonight. I, too, apologize to any of the table officers and—

Mr. Kormos: All over the building.

Ms. Churley: All over the building—who missed going out with their children for Halloween tonight, but this is an important bill that we're debating here.

I want to talk a bit about the legal aspect, and you can imagine that I looked into it and had a legal opinion. Granted, so be it, if there is a legal challenge; that's what democracy is all about. But you have to understand that 30 years of legal and social policy research and analysis about the adoption regime in Ontario has repeatedly demonstrated that confidentiality was never ensured, and that's the basic background to this.

Remember the Garber commission, which was put in place by a previous Conservative government, who recommended in the 1970s and the 1980s that adoption records be opened up? Mr. Garber, who was put in by a previous Bill Davis government, said: "Although in earlier times adoption workers may have assured their clients that secrecy would be maintained forever, in fact, there was never any such contract or agreement in law between the government and the participants to adoption."

Based on these findings, introducing a disclosure veto could be seen as putting into practice a regime that never existed in the first place. If that's going to be challenged in the courts, so be it: It will be an interesting outcome. But the reality of this situation is that those rights never existed, whether you like it or not. What we're doing here is correcting a wrong and making it right.

The Speaker: Response?

Mr. Klees: I want to use the final closing minutes to read the following quotes from Ann Cavoukian, the Information and Privacy Commissioner of Ontario: "My proposal of a simple disclosure veto for past adoptions will still permit the new law to operate retroactively, while protecting the privacy rights of those who have relied on previous assurances of confidentiality and who have led their entire lives based on those assurances. This is a model that takes into account the views of all parties involved, not just those seeking access to their records. We must strike a fair balance."

That fair balance is what the leader of the official opposition was arguing for today; it is what Mr. Jackson was advocating; it is what Mr. Sterling has been advocating, leading the charge within our caucus; and it is what I attempted to bring forward in the course of my debate. I sincerely regret the posturing and the position that this government has taken. I believe that time will prove us right. I hope that the harm will be minimized as a result of the legal challenge that I intend to support, because fundamentally, if this Legislature fails a minority of people in our province, then we have a responsibility—I have a responsibility—to do what I can as an individual, and resort to the legal system in our country, and appeal, if necessary, to the Supreme Court of Canada to ensure that this legislation does not ever become fully enacted in this province.

The Speaker: Further debate? Reply?

Ms. Pupatello has moved third reading of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents. Is it the pleasure of the House that the motion carry?

All in favour will say "aye."

All opposed will say "nay."

In my opinion, the ayes have it.

This will be a 30-minute bell. Call in the members.

I have received a letter from the chief government whip which says, "Pursuant to standing order 28(h), I request that the vote on the motion by Ms. Pupatello for third reading of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents, be deferred until Tuesday, November 1."

Hon. James J. Bradley (Minister of Tourism, minister responsible for seniors, Government House Leader): I move adjournment of the House.

The Speaker: Mr. Bradley has moved adjournment of the House. Is it the pleasure of the House that the motion carry? Carried.

This House stands adjourned until 1:30 of the clock tomorrow afternoon.

The House adjourned at 2036.

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Une liste alphabétique des noms des députés, comprenant toutes les responsabilités de chaque député, figure dans les premier et dernier numéros de chaque session et le premier lundi de chaque mois.

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