SP-15

ISSN 1710-9477

Legislative Assembly
of Ontario

Second Session, 38th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 38e législature

Official Report of Debates (Hansard)

Monday 20 February 2006

Journal des débats (Hansard)

Lundi 20 février 2006

Standing committee on social policy

Child and Family Services
Statute Law
Amendment Act, 2006

Comité permanent de la politique sociale

Loi de 2006 modifiant des lois
en ce qui concerne les services
à l'enfance et à la famille

Chair: Mario G. Racco
Clerk: Anne Stokes

Président : Mario G. Racco
Greffière : Anne Stokes

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8. e-mail: webpubont@gov.on.ca

Exemplaires du Journal

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8 courriel : webpubont@gov.on.ca

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

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

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 20 February 2006

Lundi 20 février 2006

The committee met at 0935 in committee room 1.

CHILD AND FAMILY SERVICES STATUTE LAW AMENDMENT ACT, 2006

LOI DE 2006 MODIFIANT DES LOIS EN CE QUI CONCERNE LES SERVICES À L'ENFANCE ET À LA FAMILLE

Consideration of Bill 210, An Act to amend the Child and Family Services Act and make complementary amendments to other Acts / Projet de loi 210, Loi modifiant la Loi sur les services à l'enfance et à la famille et apportant des modifications complémentaires à d'autres lois.

The Chair (Mr. Mario G. Racco): Good morning and welcome. The order of business is Bill 210. We will start the clause-by-clause. The first amendment is from the NDP, and it's on page 1, if you would like to start with the amendment, please?

Ms. Andrea Horwath (Hamilton East): I move that paragraph 3 of subsection 1(2) of the Child and Family Services Act, as set out in section 1 of the bill, be amended by striking out "To recognize that children's services should be provided" at the beginning and substituting "To recognize that children's services must be provided."

The Chair: Are there any comments you wish to make on this motion? If there are no comments, I'll ask if there is any debate.

Mrs. Linda Jeffrey (Brampton Centre): The purpose of the act is to apply to all service providers under the act, including children's aid societies. Service providers must adhere to the paramount purpose of the act under section 1 to promote the best interests, protection and well-being of children. We believe the proposed amendment could have unintended consequences if the word "must" were used, and may create situations where the child's best interests, protection and well-being are not paramount, so we're going to be rejecting this amendment.

Ms. Horwath: I might as well put this on the table now. Many of the amendments I'm bringing forward are specifically recommended by many different groups, but particularly, we spent some time working on some of the First Nations' recommendations. This amendment was suggested by the First Nations communities as a way to strengthen the language in the act, not only to ensure that the purposes of the legislation are understood and adhered to by service providers in terms of their import to First Nations, but also to other immigrant groups across the province. That was the purpose in putting it forward.

The Chair: Any further comments? If there are no further comments, then I will put the question. Shall the motion carry? Anyone in favour? Anyone opposed? The motion does not carry.

An NDP motion again, please, page 2.

Ms. Horwath: I move that subparagraph 3(i) of subsection 1(2) of the Child and Family Services Act, as set out in section 1 of the bill, be amended by adding "and cultural environment" at the end.

Not unlike the previous recommendation, this one is to reflect some of the issues raised by First Nations communities in regard to having the bill contain language that is respectful of their particular needs.

Mrs. Jeffrey: We believe the motion would make it clear that service providers should provide children's services in a manner that respects the child's cultural environment. We heard clearly from the Chiefs of Ontario and the native organizations that a child's cultural needs need to be protected. The government agrees that service providers should respect the child's cultural environment, and we support the amendment.

The Chair: Any further comments? If there are no more comments, I will put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Ms. Horwath, please, page 3.

Ms. Horwath: I have to ask a question of the clerk. I noticed, when I was reviewing these the other night, that there's a typo in the second-to-last line on that page. Where it says "spiritual and mental," it should say, "spiritual, mental and developmental needs." I don't know if I can read it into the record as it should be?

The Clerk of the Committee (Ms. Anne Stokes): If you'd like to read it in that way.

Ms. Horwath: I move that subparagraph 3(ii) of subsection 1(2) of the Child and Family Services Act, as set out in section 1 of the bill, be struck out and the following substituted:

"ii. takes into account physical, cultural, emotional, spiritual, mental and developmental needs and differences among children."

The Chair: Comments?

Mrs. Jeffrey: We believe the motion would expand the purposes of the act to make it clear that the provision of services to children should take into account the children's emotional, cultural and spiritual needs and differences. We accept and support the amendment, and we will withdraw government motion 4, which is substantially similar.

Mr. Jeff Leal (Peterborough): This is the great value of healing circles that are used extensively now in our First Nations communities. To have that enshrined is very important.

0940

The Chair: Any further debate? If there is no further debate, then I will put the question. Those in favour of the amendment? It carries.

Mrs. Jeffrey?

Mrs. Jeffrey: Number 4 is withdrawn.

The Chair: Number 4 is withdrawn. Number 5: Back to you, Madame Horwath, please.

Ms. Horwath: I move that subparagraphs 3(iii) and (iv) of subsection 1(2) of the Child and Family Services Act, as set out in section 1 of the bill, be struck out and the following substituted:

"iii. provides early, culturally appropriate assessment, planning and decision-making to achieve permanent plans for children that recognize their cultural identity in accordance with their best interests, and

"iv. includes the participation of a child, his or her parents and relatives and the members of the child's extended family and community."

The Chair: Any debate?

Mrs. Jeffrey: The government rejects the language in subparagraphs iii and iv. We believe the motion is unnecessary because the consideration of culture has been captured in NDP motions 2 and 3. Culture is only one of the components that is considered in a child's best interests. We believe it's unnecessary and that the motion fails to recognize that families should be included, where appropriate. There may be circumstances where it's not appropriate for safety reasons. So we can't support the amendment.

Ms. Horwath: There is one other point I want to make. This was suggested by First Nations communities, but also members of committee may recall some presentations from young women who had been through the system who indicated a frustration at lack of consultation with themselves, as their lawyers, the professionals, the social workers all participated in making plans for the children, particularly when they reached an age where they felt they had something to say about it, yet there was no opportunity for them to participate in these decision-making processes. So this is something that would also address that situation.

The Chair: Any debate? If there is no more debate, I will put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Mrs. Jeffrey, please.

Mrs. Jeffrey: I move that subparagraph 3(iv) of subsection 1(2) of the Child and Family Services Act, as set out in section 1 of the bill, be struck out and the following substituted:

"iv. includes the participation of a child, his or her parents and relatives and the members of the child's extended family and community, where appropriate."

The Chair: Any comments?

Mrs. Jeffrey: As it was stated on amendment 5, there may be circumstances where it's not appropriate, for safety reasons, for family to be included. The purposes of the act will make it clear that relatives, extended family and community members should be included in the provision of services to children, where appropriate. The best interests of the child are paramount. When it's appropriate, relatives, extended family and community members should be included in decision-making concerning any child.

The Chair: Any debate? If there is no more debate, I shall put the question. Those in favour of the motion? Opposed? It carries.

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

Section 2: Ms. Horwath, please, page 7.

Ms. Horwath: I move that the definition of "extended family" in subsection 3(1) of the Child and Family Services Act, as set out in subsection 2(1) of the bill, be struck out and the following substituted:

"'extended family' means persons to whom a child is related by blood, through a spousal relationship, through adoption, through cultural affiliation or through ties to or affiliation with a band or native community; ('famille élargie')."

The Chair: Any debate?

Mrs. Jeffrey: The government rejects this amendment as we believe the intent to broaden the definition of "extended family" for native children is better captured in government motion 8. The government has broadened the definition of "extended family" in motion 8 and created a definition of "community."

Ms. Horwath: The only reason this is here, from our perspective, is that it's specifically the language that was suggested by a First Nations community, in that the addition of subsection (4) reflects the fact that the core community of a First Nations child is always his or her First Nation. Their community also includes clan relations. We tried to put "clan relations" into this motion but, unfortunately, legislative counsel determined that that was not appropriate language for the bill. I thought it was important to put that on the record.

The Chair: Any further debate? If there is none, I shall put the question. Those in favour of the motion? Opposed? It does not carry.

Ms. Jeffrey, please.

Mrs. Jeffrey: I move that the definition of "extended family" in subsection 3(1) of the Child and Family Services Act, as set out in subsection 2(1) of the bill, be struck out and the following substituted:

"'extended family' means persons to whom a child is related by blood, through a spousal relationship or through adoption and, in the case of a child who is an

Indian or native person, includes any member of the child's band or native community; ('famille élargie')."

The Chair: Any comments? If there are none, I shall put the question. Shall the motion carry? Those in favour? Opposed? It carries.

Ms. Horwath, please.

Ms. Horwath: I move that section 2 of the bill be amended by adding the following subsection:

"(4) Section 3 of the act is amended by adding the following subsection:

"'(4) For the purposes of this act, the community of a child who is an Indian or native person includes all members of the child's band or native community and all persons who have ethnic, cultural or religious ties with the child or who have a beneficial or meaningful relationship with the child or with a parent, sibling or relative of the child.'"

The Chair: Any comments?

Mrs. Jeffrey: The government believes this amendment is unnecessary as the definition of "community" in section 2 of the bill is sufficiently broad to capture all persons with cultural ties to the child. Members of the child's band and native community are also included in the definition of "extended family" in the previous motion. We won't be supporting this amendment.

The Chair: Any further debate? Ms. Munro, please.

Mrs. Julia Munro (York North): Just really a legal question I wanted to raise on this, if I might, and that is the question of whether or not giving this kind of definition could be challenged by others who would then seek to use the same definition in their own cultural community.

Mrs. Jeffrey: Mr. Chair, I would defer to staff to help us with that.

The Chair: It's more of a legal question, I guess. Is staff able to answer the question? Would you please have a seat? Thank you. If we can have your name, please, for the record.

Ms. Jennifer Gallagher: Jennifer Gallagher. I'm legal counsel with the Ministry of Children and Youth Services. Good morning. As I understand it, your question is, does the definition of "community" apply to other cultures within the community; is that correct?

Mrs. Munro: My question is whether or not it would open up to members of other cultural communities as a challenge to the exclusivity of this particular part of the bill.

Ms. Gallagher: Perhaps it would be helpful to understand the purpose of this particular definition. There are provisions in the bill which refer to placement of a child with community or extended family members. The intent of that is to place an emphasis on family and kith and kin for children. In fact, the definition of "community" is broad and would include any persons to which a child has a cultural tie or the child's parent or sibling.

Mrs. Munro: So this would apply, then, to non-native cultural communities?

Ms. Gallagher: Yes, it would.

Mrs. Munro: Thank you for the clarification.

The Chair: Any further debate? If there's none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Shall section 2, as amended, carry? Those in favour? Those opposed? That's carried.

Section 2.1: Ms. Horwath, please. Page 10.

Ms. Horwath: I move that the bill be amended by adding the following section:

"2.1. The act is amended by adding the following section:

"Children's aid society deemed to be governmental"—can I just ask, Mr. Chairman, again, the wording here; it should say "organization" and not "institution." So I don't know if it's appropriate if I just read it in as "organization."

The Chair: Yes, go ahead.

Ms. Horwath: Okay. Thank you.

"Children's aid society deemed to be governmental organization

"16.1 Despite the definition of 'governmental organization' in section 1 of the Ombudsman Act, every society is deemed to be a governmental organization for the purposes of that act."

0950

I think it's pretty clear that this particular motion is the one that our Ontario Ombudsman was interested in seeing included and one that New Democrats agree with in regard to the requirement for a completely separate oversight body to which complaints or concerns about children's aid societies can be raised. I know that the government has made attempts in amendments to this bill to cover that off through a completely different process. Unfortunately, it's not one that we support. We would like to see the Ombudsman have a clear role, like the Ombudsman's office does in many other provinces, that role of oversight and complaints review. So that's why this motion is here, to see that that be changed in the legislation so that we get that opportunity for families and children in Ontario as exists in many other provinces.

The Chair: Is there any debate?

Mrs. Jeffrey: Our government shares the Ombudsman's and the NDP's concern for the best interests of children within the child protection system. The Ombudsman has stated publicly that he believes clients of a children's aid society need to have an opportunity to bring their concerns forward to a neutral third party. We agreed. Children's aid societies must be accountable to the children and families that they serve. So what we've done is, the directors' reviews have been removed as part of the initial bill because they had been widely and heavily criticized. They were inconsistent, they were lengthy, they were not very arm's-length, and in the end they were non-binding. That's why we propose the use of the Child and Family Services Review Board, the CFSRB, to replace the current directors' reviews. The decisions under the CFSRB would be timely—they're going to have some strict timelines attached to them—neutral, binding and part of a standard, province-wide complaints process that's based on best practices.

The Ombudsman also stated that under Bill 210 the Ombudsman would lose the necessary oversight his office provides with the removal of directors' reviews. We have addressed this concern by proposing the use of the CFSRB, because as a government agency the Ombudsman would have authority over the CFSRB.

Although the Ombudsman has cited some tragic child deaths as areas he'd like to review, we need to remember that it is the role of the coroner's office to review deaths of children in care.

A letter sent to the committee—I believe everybody has a copy—by the chief coroner, Dr. James Cairns, makes a number of points, and among them is that the Office of the Chief Coroner conducts an external review in every situation where a child dies while being monitored by a children's aid society. The Ministry of Children and Youth Services is working with the coroner's office on an expedited basis to further strengthen the child death review process and, in turn, the accountability of children's aid societies.

We won't be supporting this motion.

The Chair: Ms. Horwath, please.

Ms. Horwath: I just wanted to make sure the record reflects that the concerns currently being brought to the Ombudsman's office in regard to children's aid societies are quite broad. So it's not just a matter of where there is a tragic incident of the death of a child. In fact, there are concerns about the care of the CAS, about the dealings that people have with the CAS.

Members of committee will recall a particular deputation from someone who is very frustrated about the lack of accountability and the lack of ability to have that person's concerns responded to in any fashion by the CAS. There are issues around threats of removal of children and sexual abuse by staff. There are a number of allegations that have already, in the last year, been brought to the Ombudsman's office, but of course the Ombudsman is not able to investigate those kinds of complaints.

So I think it's important to acknowledge and to have the record reflect that there is a broad range of concerns that the coroner's office would never be involved in, and that we think the complete, separate authority of the Ombudsman's office would have far more effective oversight ability than the internal operations that the government is looking to put in place with its procedure.

The Chair: Any further debate? If there is not, I shall put the question. Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

Section 3: Shall section 3 carry? Those in favour? Those opposed? It carries.

Section 4: Ms. Horwath, page 11.

Ms. Horwath: I move that section 18 of the Child and Family Services Act, as set out in section 4 of the bill, be amended by adding the following subsections:

"Same, band and native community

"(2) An Indian or native child and family services authority designated under section 211 may appoint a person with the prescribed qualifications and that person shall have all the powers of a local director under subsection (1) for the purpose of designating places as places of safety for the purposes of the band or native community for which the authority was designated.

"Same

"(3) If an Indian or native child and family services authority has not been designated for a band or native community, the band or native community may appoint a person for the purposes of subsection (2)."

The Chair: Any debate?

Mrs. Jeffrey: We believe this amendment is unnecessary. It's unnecessary for the native child and family services authority to be designated as a local director, because they can be given the authority to assess homes as a place of safety without appointing them as local directors. In section 6 of the act, there is a government motion 19 which clarifies this issue and permits a body designated as a native child and family services authority to conduct assessments of a community home to determine if the home may be deemed a place of safety. Therefore, we reject this amendment.

Ms. Horwath: If I can, this was something that was recommended by First Nations communities, and it reflects their frustration with the timeliness of current processes. Therefore, they're suggesting that this language be included to allow for a more expedited approvals process for homes on reserve.

The Chair: Any further debate? If there's no further debate, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Shall section 4 carry? Those in favour? Those opposed? It carries.

Section 5: Ms. Horwath, page 12, please.

Ms. Horwath: I move that section 20.2 of the Child and Family Services Act, as set out in section 5 of the bill, be amended by adding the following subsection:

"Where child is Indian or native person

"(1.1) If the issue referred to in subsection (1) relates to a child who is an Indian or native person, the society shall consult with the child's band or native community to determine whether an alternative dispute resolution process established by that band or native community or another prescribed process will assist in resolving the issue."

Again, this was recommended by the First Nations community. Their rationale is around the entry into a First Nations-established alternative dispute resolution process, which can lead to early resolution of disputes, more meaningful involvement of parents, relatives and extended family members, and increased compliance for protection plans and lower costs. From their perspective, this language ensures that First Nations types of ADR are utilized.

The Chair: Any debate?

Mrs. Jeffrey: We believe this amendment is substantially similar to government motion 13. We can accept it and support it, and I'm happy to withdraw number 13.

The Chair: Thank you. Mrs. Munro, please.

Mrs. Munro: Coming back to an earlier conversation from legal counsel with regard to the application of the other communities that might seek a similar kind of definition, I'm just wondering whether or not, in an amendment such as this, it would seem to follow logically that someone else, another cultural community, could take the same position being suggested here. I wonder if we could have that clarification.

Ms. Gallagher: The amendment related to the definition of "community." I could advise that the definition of "community" is already sufficiently broad to capture persons who have an ethnic or cultural tie to a child. Other cultures would already have the same ability to be considered persons within a child's community.

Mrs. Munro: That's fine. My question, then, is simply the extension of that, so that in considering amendments such as the one we are considering, the same kind of environment, if you like, would exist for those communities that would fall under the inclusion of the definition that we already agreed on.

1000

Ms. Gallagher: The definition of "community."

Mrs. Munro: That's right, because if you look at this amendment that we're currently considering, it suggests here that "the society shall consult with the child's band or native community." If we've assumed the ability to transfer that in the definition at the beginning, my question then is simply, does it carry over into these other areas of the bill?

Ms. Gallagher: I'm sorry. I've misunderstood your question. No. In fact, this particular amendment is specific to where a child is an Indian or native person. With respect to the particular amendments here, which refer to where a child is an Indian or a native person the society shall do the following, those particular provisions would only apply to native children. The act has a number of aboriginal-specific provisions, and I would suggest that these provisions simply build on those that already exist.

Mrs. Munro: I just wanted for people to be clear about when a community is defined specific to a native community and when it's a different cultural community. I think it's important for us to understand that those are two different groups.

Ms. Gallagher: That's correct. I misunderstood your question; I apologize. "Native community" is in fact defined within the Child and Family Services Act. They are communities that have been designated as native communities, so it is specific. That's different than "community."

Mrs. Munro: Okay. it's just that in here there's reference to "community,"so I wanted to be sure there was that understanding.

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

Mrs. Jeffrey, number—

Mrs. Jeffrey: We're withdrawing.

The Chair: You're withdrawing page 13.

Back to you, Ms. Horwath: page 14, please.

Ms. Horwath: If I can just preface my reading in of this motion, I understand that the government's got another motion that's going to take into consideration very much similar language. I'd really like to read this one in—even though I understand it's not quite the same, but it's going to be very similar to the one that the government is going to put forward—because I think it's important that section B at least be put on the record. Again, it's just being sensitive to the language that builds on the needs of First Nations communities in terms of having their desires or their concerns put forward in the process. Again, it's not so much the substantive issue, but more the process issue and respecting their desire to have their voice at this process. That's why I'm going to continue to put it forward, although I understand completely that the government will be putting forward their own motion that builds most of these issues in.

I move that subsection 20.2(2) of the Child and Family Services Act, as set out in section 5 of the bill, be amended by,

"(a) striking out 'that a prescribed method of alternative dispute resolution be undertaken' and substituting 'that a method of alternative dispute resolution that is prescribed or approved by a band or native community be undertaken'; and

"(b) striking out 'legal representation' and substituting 'culturally competent legal representation.'"

The Chair: Is there any debate?

Mrs. Jeffrey: We require some additional wording to make it clear that young people may retain their own lawyers outside the Office of the Children's Lawyer if they wish. We had hoped we would be able to find a compromise and we would have withdrawn motion 15, but as we can't do that, we'll be voting against this amendment.

The Chair: I think the arguments have been made. Any more debate? If there's none, I'll take the vote. Those in favour of the amendment? Those opposed? It does not carry.

Mrs. Jeffrey, please.

Mrs. Jeffrey: I move that subsection 20.2(2) of the Child and Family Services Act, as set out in section 5 of the bill, be struck out and the following substituted:

"Children's Lawyer

"(2) If a society or a person, including a child, who is receiving child welfare services proposes that a prescribed method of alternative dispute resolution be undertaken to assist in resolving an issue relating to a child or a plan for the child's care, the Children's Lawyer may provide legal representation to the child if in the opinion of the Children's Lawyer such legal representation is appropriate."

The Chair: Any debate? If there is none, I will then put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Mrs. Jeffrey, number 16.

Mrs. Jeffrey: I move that section 20.2 of the Child and Family Services Act, as set out in section 5 of the bill, be amended by adding the following subsection:

"Notice to band, native community

"(3) If a society makes or receives a proposal that a prescribed method of alternative dispute resolution be undertaken under subsection (2) in a matter involving a child who is an Indian or native person, the society shall give the child's band or native community notice of the proposal."

In plain language, this motion would require children's aid to give notice of a proposal for alternative dispute resolution. It's substantially similar to motion 17 of the NDP.

We clearly heard from the Chiefs of Ontario and the native organizations that providing notification to First Nations and including the participation of band representatives enable First Nations to provide culturally appropriate support and input into the dispute process. The government believes that First Nations representatives need to be aware of any efforts to resolve matters, whether they're before a court or through alternative dispute resolution.

The Chair: Any debate? If there is none, then I will put the question. Shall the motion carry? Those in favour? Those against? It carries.

Ms. Horwath, motion 17.

Ms. Horwath: Motion 17 is still in order, then, Mr. Chairman?

The Chair: Unless staff tells me otherwise, I believe it is, yes.

Ms. Horwath: I move that section 20.2 of the Child and Family Services Act, as set out in section 5 of the bill, be amended by adding the following subsection:

"Band representation

"(4) If an alternative dispute resolution process is utilized in a matter concerning a child who is an Indian or native person and is or may be in need of protection, the society shall give notice to the child's band or native community and the band or native community may appoint a representative to participate in the process."

The Chair: Any comments?

Ms. Horwath: The concern has been where there are not agencies designated already. We heard concern from First Nations communities about being able to have processes take place in a timely fashion. What this does is provide the opportunity for that to happen through band representation.

The Chair: Is there any debate on page 17? If there is none, I'll put the question. Those in favour of the motion? Those opposed? It does not carry.

Therefore, we'll take a vote on the section, as amended. Shall section 5, as amended, carry? Those in favour? Those opposed? It carries.

Section 6, page 18, Mrs. Jeffrey.

Mrs. Jeffrey: I move that paragraph 6 of subsection 37(3) of the Child and Family Services Act, as set out in subsection 6(3) of the bill, be struck out and the following substituted:

"6. The child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community."

We heard very compelling testimony from a lot of young people who appeared before this standing committee that sibling relationships are particularly important to children and youth receiving child welfare services. In cases where children are removed from their parents' care, the loss they feel is obviously very profound. This is compounded when the separation of siblings occurs. Any plan proposed through a court needs to consider, in light of the child's best interests, how to include a sibling in the process.

The Chair: Any debate? If there is none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It carries.

Page 19, Mrs. Jeffrey.

1010

Mrs. Jeffrey: I move that subsection 37(5) of the Child and Family Services Act, as set out in subsection 6(4) of the bill, be struck out and the following substituted:

"Place of safety

"(5) For the purposes of the definition of 'place of safety' in subsection (1), a person's home is a place of safety for a child if,

"(a) the person is a relative of the child or a member of the child's extended family or community; and

"(b) a society or, in the case of a child who is an Indian or native person, an Indian or native child and family services authority designated under section 211 of part X has conducted an assessment of the person's home in accordance with the prescribed procedures and is satisfied that the person is willing and able to provide a safe home environment for the child."

In the past, where aboriginal children were removed from their homes for protection reasons, they were frequently removed to a place in a non-native home, away from their family and their community members. I think we heard that eloquently from the witnesses we saw. We believe that the First Nation child and family services agency knows more intimately the members of the community and can determine that a home is safe by following the requirements for approving a home.

Immediate placement with extended family or community members will reduce the fear and anxiety children experience and promote cultural continuity.

The Chair: Any debate on the motion? If there is none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? It carries.

Ms. Horwath, page 20, please.

Ms. Horwath: I move that subsection 37(5) of the Child and Family Services Act, as set out in subsection 6(4) of the bill, be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) if the child is an Indian or native person, the person appointed to designated places of safety under subsection 18(2) or (3) for the child's band or native community has conducted an assessment of the person's home in accordance with the procedures established by the band or native community and is satisfied that the

person whose home is assessed is willing and able to provide a safe home environment for the child."

Mr. Chairman, if I can, this is a way to—

The Chair: I'm sorry. If I may, it seems to me that this motion is redundant. We have already addressed what you're trying to address on this page. I wonder if you agree with me and, if so, maybe you want to withdraw that motion.

Ms. Horwath: That's because the previous government motion covered off the same issues?

The Chair: That's right. Are you satisfied? We have two choices. We can leave it as out of order or you can withdraw, whichever you prefer, unless you disagree, and then I'll ask staff to assist us.

Ms. Horwath: I understand that it's the same piece, but I would rather leave it as a ruling because at least reading it into the record I think is important. The language is that which was provided by First Nations communities and is very specific to the cultural sensitivity around who decides whether the home is a safe place. That's reflected in the motion I have brought forward. If you are going to rule against it as out of order, that's fine.

The Chair: So we'll do that. I'll rule it out of order. It stays on the table.

We basically have addressed section 6 so we're going to take a vote. Shall section 6, as amended, carry? Those in favour? Against? It carries.

We'll move on to section 7. No amendments, so shall section 7 carry? Those in favour? Those opposed? It carries.

Section 8: Ms. Horwath, page 21, please.

Ms. Horwath: I move that subsection 51(3.1) of the Child and Family Services Act, as set out in subsection 8(3) of the bill, be struck out and the following substituted:

"Placement with relative, etc.

"(3.1) Before making a temporary order for care and custody under clause (2)(d), the court shall consider,

"(a) whether it is in the child's best interests to make an order under clause (2)(c) to place the child in the care and custody of a person who is a relative of the child or a member of the child's extended family or community; and

"(b) the availability of financial support and services for the care of the child if the child is placed in the care and custody of a person who is a relative of the child or a member of the child's extended family or community."

The Chair: Any comments?

Ms. Horwath: It's pretty clear. What this does is allow for financial support and services for children who are placed in temporary kinship care. We came forward with this amendment and then found that First Nations also were interested in a similar amendment.

The Chair: Any debate?

Mrs. Jeffrey: We believe the motion is unnecessary. A court has the responsibility to look at any plan to determine if it is in the child's best interest. This includes the availability of supports and services. The government is concerned that the proposed amendment may have unintended consequences if it results in a reluctance to participate in a plan for a child because the court must scrutinize the finances of the proposed caregiver. So we will not be supporting this motion.

Ms. Horwath: If I can, part of the building in of this now is to provide a foundation for the fact that we're also putting amendments that ask to ensure that government support is there when financial support from the family is not there. So again, this is a principle of financial support that we will build on in future amendments in regard to having some guarantees or commitments from CASs that their extended care and maintenance agreements and their financial supports could be built in when there are arrangements being made.

Mrs. Jeffrey: I hear what the NDP is telling us, and I think funding policies are being developed so that agencies can provide appropriate support to families. It's something we clearly heard from our witnesses and it's something we took very seriously.

Ms. Horwath: If I can follow up, the only thing we wanted to be sure of is—I spoke to the minister and appreciated her explanation of how those issues will be addressed outside of legislation, but we believe that building those principles into legislation strengthens those principles and helps us to ensure that, whether it's this government or some government in the future, the requirements are still enshrined in law.

The Chair: Any further debate? If there's none, I shall put the question. Those in favour of the amendment? Those opposed? That does not carry.

The next page, back to you, page 22.

Ms. Horwath: I move that clause 51(3.2)(c) of the Child and Family Services Act, as set out in subsection 8(3) of the bill, be amended by striking out "but shall not require the society to provide financial assistance or to purchase any goods or services" at the end and substituting "and may require the society to provide financial assistance or goods or services if it would be in the best interests of the child."

That's just reflective of the previous debate.

The Chair: Any debate?

Mrs. Jeffrey: Not debate, but I guess agreement. The motion would permit the court to impose financial obligations on a CAS. Bill 210 is just one component of a larger child welfare transformation initiative. Greater supports, including financial supports, are most appropriately addressed through policy, not legislation, and funding policies are being developed. We said we'd like to see more children placed with somebody they know and trust like a grandparent or an aunt or an uncle. In these cases, supports would be needed to make the placement viable and sustainable and we recognize that. But we won't be supporting this motion.

The Chair: Any further debate? If there is none, I shall put the question. Shall the motion carry? Those in favour? Opposed? It does not carry.

No change to the section, so shall section 8 carry? Those in favour? Those opposed? That's carried.

Shall section 9 carry? Those in favour? Those opposed? It carries.

Section 10, Ms. Horwath, page 23.

Ms. Horwath: I move that subsection 54(1) of the Child and Family Services Act, as set out in subsection 10(1) of the bill, be struck out and the following substituted:

"Order for assessment

"(1) The court may make an order, based on the evidence presented and in accordance with the regulations, that one or more of the following persons attend and undergo a culturally appropriate assessment within a specified time:

"1. The child.

"2. A parent of the child.

"3. Any other person who is putting forward or would participate in a plan for the care and custody of or access to the child.

"Same

(1.0.1) An assessment referred to in subsection (1) shall be conducted by a person,

"(a) who is qualified to perform medical, emotional, developmental, psychological, educational or social assessments;

"(b) whom the parties agree is qualified to conduct the assessment in a culturally sensitive manner; and

"(c) who consents to perform the assessment."

From a First Nations perspective, it was essential that it be made clear in law that any assessment instrument used is culturally appropriate—that's language you'll notice I've had in previous recommended amendments—and that the assessment be conducted by a person or persons qualified and able to complete that assessment, again in a culturally sensitive manner. In addition, the court would have the ability, where there is any concern, to order the foster parent or prospective foster parent to attend and undergo a relevant assessment.

1020

The Chair: Any debate?

Mrs. Jeffrey: This motion would remove the authority of the courts to approve and assess where the parties can't agree. It's important, we believe, for the courts to retain that authority to compel a party to participate in an assessment. The cultural competence of an assessor can be considered by the parties when they have an opportunity to agree upon an assessor. We believe government motion 24 will provide for that. The court currently does not have authority to order a foster parent to participate in an assessment. This motion could have the unintended consequence of discouraging recruitment and retention of foster parents, so we won't be supporting it.

The Chair: Any further debate? If there is none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Mr. Craitor?

Mr. Kim Craitor (Niagara Falls): Thank you, Mr. Chair. I'm pleased to read in the following motion:

I move that subsections 54(1) and (1.1) of the Child and Family Services Act, as set out in subsection 10(1) of the bill, be struck out and the following substituted:

"Order for assessment

"(1) In the course of a proceeding under this part, the court may order that one or more of the following persons undergo an assessment within a specified time by a person appointed in accordance with subsections (1.1) and (1.2):

"1. The child.

"2. A parent of the child.

"3. Any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child.

"Assessor selected by parties

"(1.1) An order under subsection (1) shall specify a time within which the parties to the proceeding may select a person to perform the assessment and submit the name of the selected person to the court.

"Appointment by court

"(1.2) The court shall appoint the person selected by the parties to perform the assessment if the court is satisfied that the person meets the following criteria:

"1. The person is qualified to perform medical, emotional, developmental, psychological, educational or social assessments.

"2. The person has consented to perform the assessment.

"Same

"(1.3) If the court is of the opinion that the person selected by the parties under subsection (1.1) does not meet the criteria set out in subsection (1.2), the court shall select and appoint another person who does meet the criteria.

"Regulations

"(1.4) An order under subsection (1) and the assessment required by that order shall comply with such requirements as may be prescribed."

The Chair: Any comments?

Mrs. Jeffrey: In practice, studies have shown that where there is agreement on who will perform the assessment, all parties are more satisfied with the process of an assessment. We heard clearly from the aboriginal leaders who came here to see us, who expressed concern about the cultural competence, as Ms. Horwath talked about previously, of court-ordered assessments and a lack of input regarding who should be deemed appropriate to perform an assessment of an aboriginal child or family.

This motion would allow the parties a time frame to select an assessor. Each party would be able to consider and express their wishes regarding who should perform the assessment. We hope the ability to select an assessor will lead to a more meaningful participation in the assessment and a greater acceptance of the assessor's recommendations to the court.

The Chair: Any debate?

Ms. Horwath: Can I ask a question? Under "Assessor selected by parties," (1.1)—that's the part of this amendment that the government is indicating will cover off the requirements for the assessor to be culturally appropriate for First Nations communities? Is that right?

The Chair: Mr. Craitor or Mrs. Jeffrey? Whom would you like to answer that question? Maybe staff?

Mrs. Jeffrey: A lawyer, probably, could answer this better than I could.

The Chair: Staff, please.

Ms. Gallagher: What subsection (1.1) will permit is the opportunity for the parties, within a specified time frame, to agree upon an assessor. That gives the parties an opportunity to put forward persons that they deem to be culturally competent. Hopefully, parties will be able to agree, and that assessor would be selected. In the event that the parties are unable to agree to an assessor, the court would have the authority to appoint a person.

Ms. Horwath: I recall having heard concerns from First Nations communities and leaders about the frustrations they have with the processes that sometimes mean that they miss deadlines because the information isn't flowing in a direct manner, particularly with the lack of designated agencies that they have in their communities.

I get concerned that these kinds of amendments or that this kind of solution, if you will, is still going to run up against some of those procedural concerns that we heard from First Nations communities and will end up in a situation where, in fact, because communication hasn't flowed in appropriate channels or there wasn't a designated person or there's no agency, they're not going to be able to achieve what is in this amendment in terms of having a culturally appropriate assessment.

I just want to put on the record that although I understand what this is attempting to do, I'm not sure, with the rest of the concerns that we heard, that we're not going to end up in the same situation. I would hope that doesn't happen, but I do have some concerns remaining.

The Chair: Any further debate?

Mrs. Jeffrey: Not debate, but more of a comment. We realize we're breaking new ground. I think the First Nations community asked for this and wanted to be included and to have the ability to choose and make choices about their own community. My guess is that this is going to be challenging for them to achieve, but I have every confidence they'll be able to do it, with some effort.

Ms. Horwath: I would agree, except that I think success is going to come with more supports from government as well in terms of making sure that resources are available to build in those successes.

The Chair: If there's no more debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion does carry.

Shall section 10, as amended, carry? Those in favour? Those opposed? The section carries.

Shall section 11 carry? Those in favour? Those opposed? It carries.

Section 12; Ms. Horwath, page 25.

Ms. Horwath: I move that section 12 of the bill be amended by adding the following subsection:

"(2) Section 56 of the act is amended by adding the following subsection:

"Consideration of other plans submitted by parties

"'(2) The court shall, before making an order under section 57, 57.1, 65 or 65.2, consider any plan for the child's care and custody that is prepared by a parent of the child or by a person who would participate in the plan.'"

This is something that was raised by First Nations communities. Their concern is that the act should recognize alternatives to the society's plans, that those alternatives may be submitted by other parties and at least should be considered in the process. Again, this is something that they raised themselves and brought forward as a way of seeing whether that might be possible.

1030

The Chair: Any comments? Yes, Linda.

Mrs. Jeffrey: Mr. Chair, we feel this motion is unnecessary as there is already a requirement under the family law rules for a person who is putting forth a plan to submit a written plan of care. So we won't be supporting the motion.

The Chair: Okay. Any further debate or comments? If there is none, I will put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Ms. Jeffrey, page 26.

Mrs. Jeffrey: I move that section 12 of the bill be amended by adding the following subsection:

"(2) Section 56 of the act is amended by striking out 'and' at the end of subclause (d)(ii), by adding 'and' at the end of clause (e) and by adding the following clause:

"'(f) a description of the arrangements made or being made to recognize the importance of the child's culture and to preserve the child's heritage, traditions and cultural identity.'"

The rationale for this is that families and children need assurances that a child's cultural identity and development will be adequately addressed in any plan of their care. Aboriginal leaders clearly expressed concern that for Indian and native children far too little attention has been given to providing culturally appropriate placements and plans for children. This requirement would appropriately focus the attention of the society on the cultural needs of children and provides the oversight of the court to scrutinize those efforts and plans made to meet these important needs.

The Chair: Any comments or debate? If there is none, I will put the question. Shall the motion carry? Those in favour? Those opposed? It does carry.

Shall section 12, as amended, carry? Those in favour? Those opposed? Carried.

Section 13: Ms. Jeffrey, page 27.

Mrs. Jeffrey: Ms. Wynne.

Ms. Kathleen O. Wynne (Don Valley West): I move that clause 57(8)(b) of the Child and Family Services Act, as set out in subsection 13(5) of the bill, be struck out and the following substituted:

"(b) reasonable terms and conditions on,

"(i) the child's parent,

"(ii) the person who will have care and custody of the child under the order,

"(iii) the child, and

"(iv) any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child; and."

The Chair: Comments?

Mrs. Jeffrey: This amendment is proposed so that the court can maintain its current authority to impose terms and conditions on the child. As this was inadvertently omitted from the list, this is a housekeeping amendment.

Ms. Horwath: We have an amendment as well. The biggest difference, from what I can figure, is that ours includes requirements for financial assistance on purchase of goods and services "as may be necessary to ensure the success of the placement."

I'm just anticipating the same thing happening again, which is that the government motion is going to pass and mine is going to be ruled out of order—saving us all that trouble.

We thought it was important. In fact, there was a First Nations recommendation as well that the court's authority should be expanded so terms and conditions can be ordered that relate to the child's care or to a person who is putting forward a plan or who would participate in a plan for care and custody of or have access to the child. But the court should also be able to impose reasonable conditions on a foster parent and require financial assistance and/or goods and services to be provided if deemed necessary to ensure the success of the placement.

Again, this is all about making sure that children have some stability in their placements and that we do everything possible to make sure those placements are successful, including financial requirements. I'll leave it at that.

The Chair: Thanks. Any further comments or debate? If there is none, I will put the question. Shall the motion carry? Those in favour? Those against? The motion carries.

Of course, there's your motion. Do you want to put it on the record, and then we will—

Ms. Horwath: I'll have to withdraw 28.

The Chair: You will withdraw it. Okay, good. Thank you.

Therefore, shall section 13, as amended, carry? Those in favour? Those opposed? It carries.

Section 14: page 29, Ms. Wynne.

Ms. Wynne: I move that section 57.1 of the Child and Family Services Act, as set out in section 14 of the bill, be amended by adding the following subsections:

"Order restraining harassment

"(2.1) When making an order under subsection (1), the court may, without a separate application under section 35 of the Children's Law Reform Act,

"(a) make an order restraining any person from molesting, annoying or harassing the child or a person to whom custody of the child has been granted; and

"(b) require the person against whom the order is made to enter into such recognizance or post such bond as the court considers appropriate.

"Same

"(2.2) An order under subsection (2.1) is deemed to be a final order made under section 35 of the Children's Law Reform Act and may be enforced, varied or terminated only in accordance with that act."

The Chair: Any comments?

Mrs. Jeffrey: Any permanent plan for the care of a child or youth must provide for their safety, permanence and well-being. Providing a restraining order at the same time as the custody order is made streamlines the court processes and ensures there will not be a gap between the custody order and the restraining order. That's what this motion is designed to achieve.

The Chair: Are there any comments or debate? If there are none, I will put the question. Shall the motion carry? Those in favour? Those against? It carries.

Page 30.

Mrs. Jeffrey: I move that subsection 57.1(3) of the Child and Family Services Act, as set out in section 14 of the bill, be struck out and the following substituted:

"Appeal under section 69

"(3) Despite subsections (2) and (2.2), an order under subsection (1) or (2.1) and any access order under section 58 that is made at the same time as an order under subsection (1) are orders under this part for the purposes of appealing from the orders under section 69."

This amendment is a housekeeping amendment. It's to deal with an appeal of orders and should remain under the Child and Family Services Act, given that the orders are made under this act.

The Chair: Any debate? Any comments? If there's none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? It carries.

Shall section 14, as amended, carry? Those in favour? Those opposed? It carries.

Section 15: page 31.

Mr. Craitor: I move that section 57.2 of the Child and Family Services Act, as set out in section 15 of the bill, be amended by striking out "If a proceeding is commenced under this part" at the beginning and substituting "If, under this part, a proceeding is commenced or an order for the care, custody or supervision of a child is made."

The Chair: Any comments?

Mrs. Jeffrey: This is another housekeeping motion. This section makes it clear that where there are protection proceedings or a protection order been made related to a child, any proceeding under the Children's Law Reform Act regarding the child cannot proceed unless the court gives permission.

The Chair: Any comments? If there are none, I will put the question. Shall the motion carry? Those in favour? Those opposed? It does carry.

Shall section 15, as amended, carry? Those in favour? Those opposed? It does carry.

Shall section 16 carry? Those in favour? Those opposed? It carries.

Section 17: Ms. Horwath, page 32.

Ms. Horwath: I move that clause 59(2.1)(b) of the Child and Family Services Act, as set out in subsection 17(2) of the bill, be struck out and the following substituted:

"(b) the ordered access will not impair the child's future opportunities for a permanent or stable placement."

If I may, this amendment was requested by Legal Aid Ontario, who argued during the hearings that the current wording—"adoption"—rather than what we have here—"permanent or stable placement"—imposed too great a restriction on the courts when considering whether or not to vary access orders. They felt that that would be a barrier to adoption and placement, and since we're kind of trying to do the opposite with this bill, we thought that changing that language might be helpful.

The Chair: Any debate?

Mrs. Jeffrey: This motion reverts to the current wording in the Child and Family Services Act, and we believe that the current wording is not sufficient to ensure that a crown ward will be eligible for adoption where adoption is deemed to be the best plan. The intent of the government is to increase the number of crown wards eligible for adoption where adoption is the appropriate plan for the child.

The changes proposed in Bill 210 make it clear that access should not be ordered in cases where adoption is the appropriate plan, and where adoption is the plan, contact or communication between the child and a member of the child's family or community can be accomplished through an openness order or an openness agreement.

The Chair: Any debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Ms. Horwath: page 33.

1040

Ms. Horwath: I move that section 17 of the bill be amended by adding the following subsection:

"(5) Section 59 of the act is amended by adding the following subsection:

"'Indian or native child

"'(5) Despite subsection (4), if a crown ward is an Indian or native child, the society shall permit contact or communication between the child and members of the child's band or native community.'"

The Chair: Any comments or any debate?

Mrs. Jeffrey: The government feels this amendment is too broad. It may not be in the child's best interest to have contact with any member of the band as there may be safety concerns. It's really important that the child's wishes be considered. Therefore, we cannot support the motion.

The Chair: Any further debate? If there is none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Shall section 17 carry? Those in favour? Those opposed? Carried.

Section 18: Ms. Horwath, page 34.

Ms. Horwath: I move that section 59.1 of the Child and Family Services Act, as set out in section 18 of the bill, be amended by adding the following subsection:

"May request assistance of the society in subsequent proceeding

"(2) A person who has custody of a child pursuant to an order made under section 57.1 may request the assistance of the society and the society shall provide assistance if,

"(a) the person who has custody of the child wants to bring an application under section 21 of the Children's Law Reform Act to vary or terminate an order for access to the child that was made under section 58 at the same time as the custody order; or

"(b) another person brings an application under section 21 of the Children's Law Reform Act or under section 58 for an order permitting that person's access to the child."

Again, this is something that we brought forward on the recommendation or the request of First Nations communities. Their concern is the—am I reading the right one? I'm not sure if I've got the right note in front of me, now that I look at my notes here. Here it is: A person assuming custody as a result of a child welfare proceeding should be able to expect assistance, if requested, from the society that was involved in the case, in any effort made by a person denied access at the time of the custody order to subsequently regain access, or in any effort to secure an order denying access post-custody.

The Chair: Any debate?

Mrs. Jeffrey: The government feels the children's aid society should only [*failure of sound system*] concerns. If there are protection concerns in any case, the referral can be made to a children's aid society. We will not be supporting the motion.

The Chair: Any further debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Shall section 18 carry? Those in favour? Those opposed? Carried.

Section 19: Ms. Horwath, page 35.

Ms. Horwath: I move that subsection 61(7) of the Child and Family Services Act, as set out in subsection 19(2) of the bill, be struck out and the following substituted:

"Notice of proposed removal

"(7) Where a child is a crown ward and has lived continuously with a foster parent for two years, the society shall not remove the child under subsection (6) without,

"(a) giving the foster parent 10 days' notice in writing of the proposed removal and of the foster parent's right to apply for a review under subsection (7.1); and

"(b) if the child is an Indian or native person, giving a representative chosen by the child's band or native community 10 days' notice in writing of the proposed removal."

Again, this is brought forward on behalf of First Nations communities who say that just as provision is made in the act for First Nations to be notified and to participate in the decision-making around the initial placement of the child, provisions should be provided for participation in actions surrounding the removal of the

child from a placement and subsequent placement in another home.

The Chair: Any debate?

Mrs. Jeffrey: The government believes this motion doesn't quite put in place the necessary detailed processes. We believe the government motion to be more comprehensive because it includes additional safeguards. Government motion 36 also provides additional provisions in which consultation with a child's band or native community would occur. The government motion also includes the notice provisions and gives the band or the native community party status where a hearing is being held. As well, motion 36 provides for a hearing before the Child and Family Services Review Board. Therefore, we cannot support this motion.

The Chair: Any debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Opposed? It does not carry.

The Chair: Ms. Wynne: 36, please.

Ms. Wynne: I move that subsections 61(7), (7.1) and (8) of the Child and Family Services Act, as set out in subsection 19(2) of the bill, be struck out and the following substituted:

"Notice of proposed removal

"(7) If a child is a crown ward and has lived continuously with a foster parent for two years and a society proposes to remove the child from the foster parent under subsection (6), the society shall,

"(a) give the foster parent at least 10 days' notice in writing of the proposed removal and of the foster parent's right to apply for a review under subsection (7.1); and

"(b) if the child is an Indian or native person,

"(i) give at least 10 days' notice in writing of the proposed removal to a representative chosen by the child's band or native community, and

"(ii) after the notice is given, consult with representatives chosen by the band or community relating to the plan for the care of the child.

"Application for review

"(7.1) A foster parent who receives a notice under clause (7)(a) may, within 10 days after receiving the notice, apply to the board in accordance with the regulations for a review of the proposed removal.

"Board hearing

"(8) Upon receipt of an application by a foster parent for a review of a proposed removal, the board shall hold a hearing under this section.

"Where child is Indian or native person

"(8.1) Upon receipt of an application for review of a proposed removal of a child who is an Indian or native person, the board shall give a representative chosen by the child's band or native community notice of receipt of the application and of the date of the hearing.

"Practices and procedures

"(8.2) The Statutory Powers Procedure Act applies to a hearing under this section and the board shall comply with such additional practices and procedures as may be prescribed.

"Composition of board

"(8.3) At a hearing under this section, the board shall be composed of members with the prescribed qualifications and prescribed experience.

"Parties

"(8.4) The following persons are parties to a hearing under this section:

"1. The applicant.

"2. The society.

"3. If the child is an Indian or a native person, a representative chosen by the child's band or native community.

"4. Any person that the board adds under subsection (8.5).

"Additional parties

"(8.5) The board may add a person as a party to a review if, in the board's opinion, it is necessary to do so in order to decide all the issues in the review.

"Board decision

"(8.6) The board shall, in accordance with its determination of which action is in the best interests of the child, confirm the proposal to remove the child or direct the society not to carry out the proposed removal, and shall give written reasons for its decision.

"No removal before decision

"(8.7) Subject to subsection (9), the society shall not carry out the proposed removal of the child unless,

"(a) the time for applying for a review of the proposed removal under subsection (7.1) has expired and an application is not made; or

"(b) if an application for a review of the proposed removal is made under subsection (7.1), the board has confirmed the proposed removal under subsection (8.5)."

The Chair: Any comments?

Mrs. Jeffrey: We believe that in appropriate cases, a review of society decisions should occur before a neutral third party. That's why we've introduced the Child and Family Services Review Board. Decisions under the CFSRB would be timely, neutral and binding. Through notice of participation, the band can promote consideration and preservation of a child's cultural community connections.

Mrs. Munro: I'm glad that you refer to the importance of timely decisions. There are other similar kinds of boards that do have very prescriptive indicators of timeliness. Given the delicacy of the situations that this board would be dealing with, I think this might be an opportunity, if it isn't somewhere else, to indicate what kind of timeliness you're talking about.

I would also suggest that it has become practice in many other pieces of legislation to look at 10 business days. Those two issues around timeliness—I'd appreciate a response from you on it.

Mrs. Jeffrey: Maybe I could ask staff to clarify "timeliness"?

Mr. Bruce Rivers: Bruce Rivers, Child Welfare Secretariat. The 10 days are 10 calendar days, not 10 business days. Also, aside from the 10 days within which the foster parent must express their concern about the plan, there will then be conditions through regulation that

will apply to all other steps of the complaint process, including the time within which the board must respond to the complaint.

Mrs. Munro: Thank you. I think it's really important that those kinds of safeguards are there.

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

Page 37: Ms. Horwath, please.

Ms. Horwath: Mr. Chairman, I might be wrong, but I think both of the next two items are in reference to the government motion that was just passed.

1050

The Chair: You're referring to both 37 and 38?

Ms. Horwath: Yes. So there's really no need for these, because they've been incorporated in the motion that we all just supported. So I would just withdraw 37 and 38.

The Chair: Thank you. Page 39: Mrs. Jeffrey.

Mrs. Jeffrey: I move that subsection 19(3) of the bill be struck out and the following substituted:

"(3) Subsection 61(9) of the act is repealed and the following substituted:

"'Where child at risk

"'(9) A society may remove the child from the foster home before the expiry of the time for applying for a review under subsection (7.1) or at any time after the application for a review is made if, in the opinion of a local director, there would be a risk that the child is likely to suffer harm during the time necessary for a review by the board.'"

A child's safety must always be a priority guiding what CASs do and the actions of the organization. Any complaint review procedure cannot compromise the ability of a society to act to protect a child when necessary.

The Chair: Any debate?

Ms. Horwath: I just have a question. What happens where there is no local director? There is no language here that includes the situations we've heard about where, in some First Nations communities, there aren't the same types of resources. Could I just get an understanding, maybe from staff, what happens when there is no local director?

Ms. Gallagher: "Local director" refers to the executive director of a children's aid society. So in every case here there would be a local director.

Ms. Horwath: In every case there would be a local director?

Ms. Gallagher: These are children who would be placed in foster care, and there would be a children's aid society involved.

The Chair: Any further questions or debate? If there are none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? It does carry.

Shall section 19, as amended, carry? Those in favour? Those opposed? Section 19 carries.

Shall section 20 carry? Those in favour? Those opposed? It carries.

Section 21, page 40: Mrs. Jeffrey.

Mrs. Jeffrey: I move that section 63.1 of the Child and Family Services Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Society's obligation to a crown ward

"63.1 Where a child is made a crown ward, the society shall make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family through one of the following:

"1. An adoption.

"2. A custody order under subsection 65.2(1).

"3. In the case of a child who is an Indian or native person, a plan for customary care as defined in part X."

The rationale for this is that we heard from the Chiefs of Ontario and the native organizations that adoption is generally considered by First Nations not to be culturally appropriate as an option for aboriginal children. A permanent customary care arrangement can enable a child to remain in their native community and be raised in a manner that preserves cultural identity and relationships. That's why this motion is here.

Ms. Horwath: You'll see that the next amendment, page 41, is one that addresses a similar issue. The way we've worded our amendment, though, is reflective of First Nations' preference that where a child has been made a crown ward, you go through a process that shows what their desires are first. What we've done—as you can see on page 41—is a ranking of the preferences that reflect the First Nations' preference in terms of, first, having the arrangement by the child's band or native community; second, a custody order; and last, adoption.

I'm going to be in a situation where this second motion that I have on the same section is going to be out of order, but when the time comes, I'm going to ask to read it into the record so that it's there.

The Chair: That's fair. Any debate? If there is none, I shall put the question. Those in favour? Those opposed? It carries.

You have the floor again, Ms. Horwath.

Ms. Horwath: I move that section 63.1 of the Child and Family Services Act, as set out in section 21 of the bill, be amended by adding the following subsection:

"Where child an Indian or native person

"(2) If the child who is made a crown ward is an Indian or native child, the society shall, in making efforts to assist the child to develop a positive, secure and enduring relationship within a family, give preference,

"(a) first, to an arrangement by the child's band or native community to provide customary care within the meaning of part X;

"(b) second, to a custody order made under section 65.2; and

"(c) last, to an adoption order made under part VII."

The Chair: Any comments? You already made them before. This motion does add something to the one that was just approved, so it is fair on the floor. Is there any debate? If there's none, then I'll put the question. Those in favour of the motion? Opposed? It does not carry.

Shall section 21, as amended, carry? Those in favour? Those opposed? It does carry.

Section 22: Ms. Horwath, page 42.

Ms. Horwath: I move that section 64 of the Child and Family Services Act, as set out in section 22 of the bill, be amended by adding the following subsections:

"Same

"(5.1) A notice referred to in subsection (5) shall be given by the society on the same day the application is made or received, as the case may be, and shall be in the form approved by the minister.

"Postponement of review

"(5.2) Where a society receives notice of a date for a review by a court under this section, the society shall,

"(a) contact every person entitled to notice under subsection (5) to determine if notice was received by that person; and

"(b) if notice was not received by one of the persons contacted, give the person notice and apply to the court for a postponement of the review date."

Again, Mr. Chair, if I may, we heard very clearly from First Nations communities that all too often notices sent by representatives chosen by a child's First Nation or the First Nations are not received or not received sufficiently in advance of the hearing because of the remote nature of some of these communities. So there wasn't enough time permitting for the participation that's provided for in the act to actually occur. What this does is simply put some language in that makes it very clear that it's not just a matter of ensuring notice is sent but that in fact notice is received, and if notice isn't received, appropriate actions can occur so that the process isn't continuing inadvertently without appropriate timelines for participation to happen for First Nations communities.

The Chair: Any debate?

Mrs. Jeffrey: The family law rules and the Child and Family Services Act already set out rules to notices of application under the act. The government has concerns that both motions 42 and 43 are so restrictive that they would not allow the courts to dispense with services requirements in cases where there's an urgency or when it is necessary for the protection of a child. There are already processes in place to request postponement of review dates when there hasn't been adequate notice, so we won't be supporting the motion.

The Chair: Any further debate? If there's none, I shall put the question. Shall the motion carry? Those in favour? Those against? It does not carry.

Shall section 22 carry? Those in favour? Those opposed? It carries.

Shall section 23 carry? Those in favour? Those opposed? Carried.

Section 24: Ms. Horwath, page 43.

Ms. Horwath: I move that section 65.1 of the Child and Family Services Act, as set out in section 24 of the bill, be amended by adding the following subsections:

"Same

"(6.1) A notice referred to in subsection (6) shall be given by the society on the same day the application is made or received, as the case may be, and shall be in the form approved by the minister.

"Postponement of review

"(6.2) Where a society receives notice of a date for a review by a court under this section, the society shall,

"(a) contact every person entitled to notice under subsection (6) to determine if notice was received by that person; and

"(b) if notice was not received by one of the persons contacted, give the person notice and apply to the court for a postponement of the review date."

Again, similar to the previous motion, this simply builds in requirements to ensure that the notices have in fact been received, so instead of procedures just moving along with an assumption that notice has been received, this requires that follow-up be done to ensure that the notice was received. It's a more proactive way of ensuring that participation occurs in the way it's supposed to.

1100

The Chair: Thank you. Any debate? Mrs. Jeffrey.

Mrs. Jeffrey: Same argument as on 42. We're concerned the amendment is very restrictive and wouldn't allow the court to act and dispense with service requirements if there was an urgency that was necessary to the protection of the child, so we won't be supporting the amendment.

The Chair: Any further debate? If there's none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Ms. Horwath: 44.

Ms. Horwath: I move that section 65.2 of the Child and Family Services Act, as set out in section 24 of the bill, be amended by adding the following subsection:

"Consideration of financial support

"(1.1) In making an order under subsection (1), the court shall consider the availability of sufficient financial support and services for the care of the child."

Again, this is, as I've mentioned in previous amendments, the attempt to try to build in financial supports for the child.

The Chair: Any debate?

Mrs. Jeffrey: The government feels this amendment is not required, as the court has a responsibility to look at any plan to determine if it is in the child's best interests. This includes the availability of supports and services. Funding policies are being developed so that agencies can provide appropriate supports to families assuming the supervision and care of a child. The proposed amendment could have unintended consequences that result in a reluctance to participate in a plan for a child because the court must scrutinize the finances of a proposed caregiver. We won't be supporting the motion.

The Chair: Any further debate? If none, I'll put the question. Shall the motion carry? Those in favour? Those opposed. It does not carry.

Ms. Horwath: 45.

Ms. Horwath: I move that clause 65.2(4)(c) of the Child and Family Services Act, as set out in section 24 of the bill, be amended by striking out "but shall not require the society to provide financial assistance or purchase any goods or services" at the end and substituting "and

may require the society to provide financial assistance or goods or services if it would be in the best interests of the child."

This amendment would allow for financial supports and services for children placed under a supervision order, and it requires the society to make sure that that happens. It's one of those financial requirements that, although we understand that the government is indicating that they'll undertake these things through policy, we think should be enshrined in legislation.

The Chair: Any debate?

Mrs. Jeffrey: We believe this motion would permit the court to impose financial obligations on a CAS, and as I stated earlier, Bill 210 is one component of a larger welfare transformation initiative. Greater supports, including financial supports, are most appropriately addressed through policy, not legislation. We have said that we'd like to see more children placed with someone they know and trust, be it an uncle, an aunt or a grandparent, and in many cases supports would be needed to make the placement both viable and sustainable. We won't be supporting this motion.

The Chair: Any further debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Page 46: Mrs. Jeffrey.

Mrs. Jeffrey: I move that section 65.2 of the Child and Family Services Act, as set out in section 24 of the bill, be amended by adding the following subsection:

"Rights and responsibilities

"(7) A person to whom custody of a child is granted by an order under this section has the rights and responsibilities of a parent in respect of the child and must exercise those rights and responsibilities in the best interests of the child."

This amendment makes it clear that the child's legal guardian is the person who obtained custody of the child, and in plain language, where a custody order is made under section 65.2, placing a child in the custody of any person, including a foster parent, that person will have the rights and responsibilities of a parent with respect to the child and must exercise those rights in the best interests of that child.

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

Shall section 24, as amended, carry? Those in favour? Those opposed? Carried.

Shall section 25 carry? Those in favour? Those opposed? Carried.

Section 26: Ms. Horwath, page 47.

Ms. Horwath: I move that subsection 68(1) of the Child and Family Services Act, as set out in section 26 of the bill, be amended by striking out "a complaint by a person concerning services sought or received by the person from the society" and substituting "a complaint concerning services sought or received by a person from the society."

Again, this is a First Nations recommendation that indicates a provision should provide for a third party to request a review on behalf of the person who sought or received a service from a society.

The Chair: Any debate?

Mrs. Jeffrey: The complaints process is intended to address specific complaints of those immediately affected by the services sought or received. Nothing prohibits complainants from having a support person or an advocate to assist them in making their complaint. The complaint process is not designed or meant to deal with systemic issues. Those who are complaining about systemic issues can contact the CAS board of directors and/or the ministry at any point to make a general complaint. We won't be supporting this motion.

The Chair: Any debate? If there is none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Ms. Horwath: page 48.

Ms. Horwath: I move that subsection 68(2) of the Child and Family Services Act, as set out in section 26 of the bill, be amended by striking out "by the person" and substituting "by the person or by another person."

The Chair: Any questions?

Mrs. Jeffrey: Our arguments are the same on this motion. We won't be supporting it.

The Chair: Any more debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Page 49: Ms. Wynne, please.

Ms. Wynne: I move that section 68 of the Child and Family Services Act, as set out in section 26 of the bill, be struck out and the following substituted:

"Complaint to society

"68(1) A person may make a complaint to a society relating to a service sought or received by that person from the society in accordance with the regulations.

"Complaint review procedure

"(2) Where a society receives a complaint under subsection (1), it shall deal with the complaint in accordance with the complaint review procedure established by regulation, subject to clause 68.1(2).

"Available to public

"(3) A society shall make information relating to the complaint review procedure available to any person upon request.

"Society's decision

"(4) Subject to subsection (5), the decision of a society made upon completion of the complaint review procedure is final.

"Application for review by board

"(5) If a complaint relates to one of the following matters, the complainant may apply to the board in accordance with the regulations for a review of the decision made by the society upon completion of the complaint review procedure:

"1. An alleged inaccuracy in the society's files or records regarding the complainant.

"2. A matter described in subsection 68.1(4).

"3. Any other prescribed matter.

"Review by board

"(6) Upon receipt of an application under subsection (5), the board shall give the society notice of the application and conduct a review of the society's decision.

"Composition of board

"(7) The board shall be composed of members with the prescribed qualifications and prescribed experience.

"Hearing optional

"(8) The board may hold a hearing and, if a hearing is held, the board shall comply with the prescribed practices and procedures.

"Non-application

"(9) The Statutory Powers Procedure Act does not apply to a hearing under this section.

"Board decision

"(10) Upon completing its review of a decision by a society in relation to a complaint, the board may,

"(a) in the case of a review of a matter described in paragraph 1 of subsection (5), order that a notice of disagreement be added to the complainant's file;

"(b) in the case of a matter described in subsection 68.1(4), make any order described in subsection 68.1(7), as appropriate;

"(c) redirect the matter to the society for further review;

"(d) confirm the society's decision; or

"(e) make such other order as may be prescribed.

"Notice of disagreement

"(11) A notice of disagreement referred to in clause (10)(a) shall be in the prescribed form if the regulations so provide.

"No review if matter within purview of court

"(12) A society shall not conduct a review of a complaint under this section if the subject of the complaint,

"(a) is an issue that has been decided by the court or is before the court; or

"(b) is subject to another decision-making process under the act or the Labour Relations Act, 1995.

"Transitional

"(13) This section as it read immediately before the day this subsection came into force continues to apply in respect of complaints made to a society before that day and of any reviews requested of the director before that day.

"Complaint to board

"68.1(1) If a complaint in respect of a service sought or received from a society relates to a matter described in subsection (4), the person who sought or received the service may,

"(a) decide not to make the complaint to the society under section 68 and make the complaint directly to the board under this section; or

"(b) where the person first makes the complaint to the society under section 68, submit the complaint to the board before the society's complaint review procedure is completed.

"Notice to society

"(2) If a person submits a complaint to the board under clause (1)(b) after having brought the complaint to the society under section 68, the board shall give the society notice of that fact and the society may terminate or stay its review, as it considers appropriate.

"Complaint to board

"(3) A complaint to the board under this section shall be made in accordance with the regulations.

"Matters for board review

"(4) The following matters may be reviewed by the board under this section:

"1. Allegations that the society has refused to proceed with a complaint made by the complainant under subsection 68(1) as required under subsection 68(2).

"2. Allegations that the society has failed to respond to the complainant's complaint within the time frame required by regulation.

"3. Allegations that the society has failed to comply with the complaint review procedure or with any other procedural requirements under the act relating to the review of complaints.

"4. Allegations that the society has failed to comply with clause 2(2)(a).

"5. Allegations that the society has failed to provide the complainant with reasons for a decision that affects the complainant's interests.

"6. Such other matters as may be prescribed.

1110

"Review by board

"(5) Upon receipt of a complaint under this section, the board shall conduct a review of the matter.

"Application

"(6) Subsections 68(7), (8) and (9) apply with necessary modification to a review of a complaint made under this section.

"Board decision

"(7) After reviewing the complaint, the board may,

"(a) order the society to proceed with a complaint made by the complainant in accordance with the complaint review procedure established by regulation;

"(b) order the society to provide a response to the complainant within a period specified by the board;

"(c) order the society to comply with the complaint review procedure established by regulation or with any other requirements under the act;

"(d) order the society to provide written reasons for a decision to a complainant;

"(f) dismiss the complaint; or"—

Mrs. Jeffrey: You just missed "(e)."

Ms. Wynne: Oh, sorry.

Ms. Sibylle Filion: Just read it in as (e) and we'll make the change.

Ms. Wynne: There is no (e) on my sheet. Oh, I'm sorry. Okay, I'll just go back, then:

"(d) order the society to provide written reasons for a decision to a complainant;

"(e) dismiss the complaint; or

"(f) make such other order as may be prescribed.

"No review if matter within purview of court

"(8) The board shall not conduct a review of a complaint under this section if the subject of the complaint,

"(a) is an issue that has been decided by the court or is before the court; or

"(b) is subject to another decision-making process under the act or the Labour Relations Act, 1995."

The Chair: Any comments?

Mrs. Jeffrey: I'm going to repeat some of the things I've said before, but this is a really important amendment. Decisions under the CFSRB would be timely, neutral and binding as part of a standard, province-wide complaints process that we will have based on best practices. The director's reviews of client complaints were removed as part of the initial bill because they were inconsistent and they were lengthy. We heard a lot from the witnesses about how frustrated they were, and at the end, they're non-binding. The Ombudsman was concerned that under Bill 210, he would lose his oversight role. With the removal of the director's review, we have addressed this concern by proposing the use of the CFSRB, because as a government agency, the Ombudsman would have authority over the CFSRB.

The Chair: Mrs. Munro and then Ms. Horwath, please.

Mrs. Munro: As everyone understands, certainly section 68 was an issue. We heard from many deputants. Particularly important was the number of individuals who chose this opportunity to come forward and make clear to all of us the kind of frustration that they had with the current process. I had an amendment prepared for section 68, and I just want to make clear that it in essence served the same purpose as this one, so I withdrew it. But I think it's really important that we provide the public with the kind of consistency that would come with giving this board the responsibility for the contents of Bill 210. I look forward to the fact that this will then provide that consistency and, frankly, the comfort to those people who have come forward and expressed their frustration and concerns with the current system. We will be supporting this amendment.

Ms. Horwath: I just want to take the opportunity to read into the record some concerns that the Ombudsman raised around this solution. He says: "It's a stopgap measure which does not go far enough. All it does is add another layer of bureaucracy to internal processes."

The Ombudsman pointed out that the Child and Family Services Review Board, which will operate under limited jurisdiction, lacks both investigative powers and the power to address systemic issues affecting children and families. "You are talking about protecting our children. How many more cases like Jeffrey Baldwin will there be before the government wakes up and sees we need stronger accountability, the kind that comes from having an independent watchdog with strong investigative powers?"

I do understand that the government has chosen to go this route as opposed to the one that I suggested through my amendment to let the Ombudsman have the oversight over the children's aid societies. I only hope that five years from now, when we look back, people are more satisfied with the process than they are now and that we end up in a situation where people do feel that there is accountability in the system, because they certainly don't feel that now.

I do wish it had gone a different way, but I understand that since my motion wasn't supported, the government obviously has to put something in place to address the concerns that have come forward. I only hope that the future will prove that the right thing was done. I'm not so sure that that's the case.

Mr. Ted Arnott (Waterloo–Wellington): Mr Chair, the Ombudsman is an independent officer of the Legislature who reports to the Legislature as a whole, not to the government, and when the Ombudsman comes into the standing committee to make a presentation on a bill like Bill 210, I think it's something we should all listen to very carefully. I understand he was here on December 6, and in his initial submission to this committee he asked that an amendment be brought forward—and I'll quote from his report—saying that "Approved agencies designated as children's aid societies under subsection 15(2) shall be deemed to be governmental organizations for the purposes of the Ombudsman Act."

I would certainly like to say that, while I hear the parliamentary assistant and the government acknowledging that the Ombudsman has an issue, it is quite clear that the government is not prepared to respond to the Ombudsman in the way that he has requested. I want that to be clearly stated on the record.

The Chair: Any further debate?

Mrs. Jeffrey: On the issue of the Ombudsman, we share the Ombudsman's concern for the best interests of children and the child protection systems we have. I think we all care about that issue; we just disagree how we'll get there. But we clearly want to change the way the system works and we want to provide the best system possible. This is the solution we think will work best.

Mr. Arnott: It appears to me, if I'm not mistaken, it's also, to use the government's word, the solution that will limit the number of complaints that will go to the Ombudsman dramatically, as opposed to what the Ombudsman is requesting in terms of his ability to respond to complaints. Only a fraction of the complaints will come to the attention of the Ombudsman if you have to go through the appeal board first. Again, I'll just put that on the record because I think it's important that the committee be aware of what it's voting on.

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

Shall section 26, as amended, carry? Those in favour? Those opposed? It does carry.

Section 27: Ms. Horwath, page 50.

Ms. Horwath: I move that subsection 71(2) of the act, as set out in section 27 of the bill, be amended by adding at the end "until the crown ward or former crown ward attains the age of 25 years, whether or not he or she has been adopted."

What this does is allow for extended care and maintenance to be available until the age of 25 for children who age out of foster care. I think anyone who was attending the hearings will recall that young people were concerned that, as a result of some of the challenges that have led them to be in foster care or in the child protection system, it takes them a little bit longer to pull themselves into a position where they can start taking advantage of things, for example, post-secondary education and other opportunities.

This is a way of acknowledging that there are challenges for young people, and the more we are able to provide for their extended care and maintenance to a greater age so that they can take the time to make decisions and to undertake initiatives towards, for example, post-secondary education or other kinds of opportunities that might be available to them, we should do so. This is a way of extending the age to 25 in acknowledgement that young people, we know, even in families where there are no child protection issues, are taking longer to leave the nest, you would say. So it's appropriate, then, to acknowledge that trend in this legislation as well by providing that extended care and maintenance till beyond the age of 18; in fact, beyond the age of 21 to the age of 25.

1120

The Chair: Any debate?

Mrs. Jeffrey: We recognize that achieving a strong permanent plan for a child will require the availability of post-adoption supports. We're committed to the provision of a funding policy that will enable the provision of appropriate post-adoption supports by children's aid societies. The intention of continuing care and maintenance is to provide supports for young people where the permanency of legal adoption has not been available.

The government's motion 53 will expand extended care and maintenance so it is available for youth at age 18 or former crown wards who were cared for under a customary care agreement or a custody order if they meet the eligibility criteria. So we won't be supporting this motion.

The Chair: Any further debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Ms. Horwath: page 51, please.

Ms. Horwath: I move that section 27 of the Bill be amended by adding the following subsection:

"(2) Section 71 of the act is amended by adding the following subsection:

"'Care and maintenance for Indian or native child in customary care

"'(3) If a band or native community has declared that an Indian or native child is being cared for under customary care, the society may continue to provide care and maintenance in accordance with the regulations until the Indian or native child attains the age of 25 years, whether or not he or she has been adopted.'"

Again, this is similar language. It was raised by First Nations, and their rationale is that it is agreed that any relatives and foster parents who become legal guardians for youth may have limited financial means and youth could potentially be faced with no financial supports if they're preparing for independence and/or attending post-secondary education. It is therefore proposed that this clause be strengthened to require that societies make a transitional plan in consultation with those involved and to provide care and maintenance as agreed to under the plan. Then the next amendment will deal with transitional plans.

The Chair: Any debate?

Mrs. Jeffrey: Same argument as the previous motion. The government's motion coming up, number 53, will expand extended care and maintenance so it's available to youth at age 18 or former crown wards. So we won't be supporting this motion.

The Chair: Any debate? If there's none, I'll take the vote. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Ms. Horwath: page 52.

Ms. Horwath: I move that subsection 71(2) of the Child and Family Services Act, as set out in section 27 of the bill, be struck out and the following substituted:

"Continuing care

"(2) Where a custody order under subsection 65.2(1) or an order for crown wardship expires under subsection (1) or is otherwise terminated and continued care and maintenance for the person who was the subject of the order is required to ensure a successful transition, the society shall,

"(a) continue to provide care and maintenance in accordance with the regulations after the order expires or is terminated under a transitional plan prepared in accordance with subsection (3); and

"(b) if the person who was the subject of the order is an Indian or native person, give at least three months' notice of the expiry or termination to a representative chosen by the child's band or native community.

"Transition plan

"(3) A transition plan referred to in clause (2)(a) shall be prepared by the society in consultation with the child who was the subject of the expired or terminated order, the person who will be providing the continued care and maintenance and, if the child is an Indian or native person, a representative chosen by the child's band or native community."

Again, this just outlines the transitional plan requirement.

The Chair: Is there any debate?

Mrs. Jeffrey: Extended care and maintenance occurs when the children's aid society and the youth are able to reach an agreement related to a planned transition to independence, including education, training and employment. We believe the government motion provides flexibility in the act to provide extended care and maintenance for former crown wards or children who were cared for under a customary care arrangement or a custody order where they meet the eligibility criteria. Further policy development is underway, with the intent of improving

the services provided by children's aid societies regarding supports for youth preparing for independence. We won't be supporting this motion.

The Chair: Any further debate? If there is none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Page 53: Mrs. Jeffrey.

Mrs. Jeffrey: I move that section 27 of the bill be struck out and the following substituted:

"27. Subsection 71(2) of the act is repealed.

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

"EXTENDED CARE

"Extended care

"71.1(1) A society may provide care and maintenance to a person in accordance with the regulations if,

"(a) a custody order under subsection 65.2(1) or an order for crown wardship was made in relation to that person as a child; and

"(b) the order expires under section 71.

"Same, Indian and native person

"(2) A society or agency may provide care and maintenance in accordance with the regulations to a person who is an Indian or native person who is 18 years of age or more if,

"(a) immediately before the person's 18th birthday, he or she was being cared for under customary care as defined in section 208; and

"(b) the person who was caring for the child was receiving a subsidy from the society or agency under section 212."

The rationale is that for aboriginal children and youth, customary care is a culturally appropriate form of permanent care. This amendment would permit the same transitional supports that otherwise would be available if the youth remained in care as a crown ward. This amendment will promote cultural continuity in the case of youth and, as well, it will help education and economic security of our aboriginal youth.

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

Shall section 27, as amended, carry? Those in favour? Those opposed? It carries.

Shall section 28 carry? Those in favour? Those opposed? It carries.

Section 29: Mr. Leal, please.

Mr. Leal: I move that section 29 of the bill be struck out and the following substituted:

"29.(1) Subsection 80(1) of the act is repealed and the following substituted:

"'Restraining order

"'(1) Instead of making an order under subsection 57(1) or section 65.2 or in addition to making a temporary order under subsection 51(2) or an order under subsection 57(1) or section 65.2, the court may make one or more of the following orders in the child's best interests:

"'1. An order restraining or prohibiting a person's access to or contact with the child, and may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.

"'2. An order restraining or prohibiting a person's contact with the person who has lawful custody of the child following a temporary order under subsection 51(2) or an order under subsection 57(1) or clause 65.2(1)(a) or (b).

"'(2) Subsection 80(3) of the act is repealed and the following substituted:

"'Duration of the order

"'(3) An order made under subsection (1) shall continue in force for such period as the court considers in the best interests of the child and,

"'(a) if the order is made in addition to a temporary order under subsection 51(2) or an order made under subsection 57(1) or clause 65.2(1)(a), (b) or (c), the order may provide that it continues in force, unless it is varied, extended or terminated by the court, as long as the temporary order under subsection 51(2) or the order under subsection 57(1) or clause 65.2(1)(a), (b) or (c), as the case may be, remains in force; or

"'(b) if the order is made instead of an order under subsection 57(1) or clause 65.2(1)(a), (b) or (c) or if the order is made in addition to an order under clause 65.2(1)(d), the order may provide that it continues in force until it is varied or terminated by the court.

"'(3) Clause 80(5)(a) of the act is repealed and the following substituted:

"'(a) extend the order for such period as the court considers to be in the best interests of the child, in the case of an order described in clause (3)(a); or.'"

Mrs. Jeffrey: This is a housekeeping amendment. The amendment will permit a court to make restraining orders at any time in a protection case, and for a period of time necessary to protect the child and the caregiver.

The Chair: Is there any comment or debate? If there is none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? It carries.

Shall section 29, as amended, carry? Those in favour? Those opposed? It carries.

Shall section 30 carry? Those in favour? Those opposed? It carries.

Section 30.1 is a new section. Ms. Horwath, pages 55 and 55a, please.

1130

Ms. Horwath: I move that the bill be amended by adding the following section:

"30.1 The act is amended by adding the following sections:

"'Child advocate

"'102.1(1) Within 30 days after this section comes into force, or so soon after as possible, the Lieutenant Governor in Council shall, on the address of the Legislative Assembly, appoint a person to be the Children Advocate to be responsible for the operation of the Office of Child and Family Service Advocacy.

"'Officer of the assembly

"'(2) The Child Advocate is an officer of the assembly.

"'Term of office

"'(3) Subject to subsection (4), the Child Advocate shall hold office for a term of five years, and may be reappointed for further terms of five years each.

"'Removal from office

"'(4) The Lieutenant Governor in Council may at any time remove the Child Advocate from office for cause, on the address of the Legislative Assembly.

"'Report to the Legislative Assembly

"'102.2(1) The Child Advocate shall, in every year, make a report in writing and shall deliver the report to the Speaker of the Legislative Assembly.

"'Contents

"'(2) The report mentioned in subsection (1) shall contain whatever information the Child Advocate considers appropriate, but shall contain, at a minimum, a report on the activities and finances of the Office of Child and Family Service Advocacy, the outcomes expected in the next year, and the results achieved in the previous year.

"'Laying before assembly

"'(3) The Speaker shall lay the report before the assembly at the earliest reasonable opportunity.'"

I think it's obvious that this amendment addresses the Liberal promise to make the Child Advocate an independent officer of the Legislature. That promise, of course, was made quite some time ago and still hasn't been realized. I felt it was appropriate to bring this amendment in the context of this bill because it's time that promise be acted upon. This is a very easy way to have that promise acted upon because now we can just accept this amendment and it will be done.

The Chair: Any comments?

Mrs. Jeffrey: We did make a promise that we would have a child advocate, and we haven't done it yet. We're going to be bringing forward legislation to do that, and this is a good place to talk about it. The government is committed to establishing a truly independent advocate for children and youth to strengthen their voices. Government legislation on the advocate will be separate from the CFSA. If the government legislation is passed, it will create an independent child advocate. We'll be using the NDP motion as guidance, and we appreciate the interest and work that's gone into the motion. We'll try to create a bill that will contain the necessary components to create an independent officer of the Legislature.

The Chair: Any further debate? If there is none, I'll take the vote. Shall the motion carry? Those in favour? Those opposed? It does not carry. So there is no section to vote on.

Shall section 31 carry? Those in favour? Those opposed? It carries.

Section 32: Mrs. Jeffrey, please, page 56.

Mrs. Jeffrey: I move that the definition of "openness order" in subsection 136(1) of the Child and Family Services Act, as set out in subsection 32(2) of the bill, be amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding the following clause:

"(c) if the child is an Indian or native person, a member of the child's band or native community who may not have had a significant relationship or emotional tie with the child in the past but will help the child recognize the importance of his or her Indian or native culture and preserve his or her heritage traditions and cultural identity."

We clearly heard from the Chiefs of Ontario and the native organizations that permitting a member of an aboriginal child's band or native community to be the subject of an openness order broadens and better promotes the likelihood that a child will maintain a cultural tie after adoption. This motion hopes to achieve that.

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

Shall section 32, as amended, carry? Those in favour? Those opposed? It carries.

Section 33: Ms. Horwath, page 57.

Ms. Horwath: I move that section 33 of the bill be amended by adding the following subsection:

"(3) Subsection 140(3) of the act is repealed and the following substituted:

"'Where child an Indian or native person

"'(3) Where a child to be placed for adoption is an Indian or a native person, the society shall notify the child's band or native community and shall consult with a representative chosen by the child's band or native community on the selection of an adoption placement.'"

This is something that was recommended by First Nations communities, and it makes it clear that the society will consult, given the principle of openness, with First Nations on the selection of an appropriate permanent placement.

Mrs. Jeffrey: We feel that government motion 70 will better address consultation in a broader fashion. It will allow regulations to be made requiring consultation in individual cases, including consultation on adoption placements. Government motion 59 strengthens the involvement of a native child's band or their community in the adoption planning process. It requires early notice in the process, prohibits the child placement before the band has an opportunity to respond and provides specific and extended time frames for band participation, so we won't be supporting this motion.

The Chair: Any debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Ms. Horwath: 58.

Ms. Horwath: I move that section 33 of the bill be amended by adding the following subsections:

"Care and maintenance after adoption

"(4) The society may continue to provide care and maintenance for a child in accordance with the regulations after the child is adopted until the child or former child attains the age of 25 years.

"Financial assistance

"(5) A person with whom a child is placed for adoption may apply to the society in accordance with the regulations for financial assistance for the care of the child.

"Regulations

"(6) The Lieutenant Governor in Council may make regulations governing the application for and the payment by a society of financial assistance to persons with whom a child is placed for adoption."

This is an amendment that would allow for extended care and maintenance to be available to children up until the age of 25 and for financial supports and services to be made available to children and guardians and adoptive parents. Again, it's a way of trying to enshrine this in legislation. We know that circumstances can always change, and if financial assistance up to the age of 25 is what will help to ensure that the placement remains stable and successful, or an adoption remains a successful placement for a child, then that's what we should be doing.

The Chair: Any debate?

Mrs. Jeffrey: In previous motions, we've supported extending care and maintenance to age 18, and this motion extends it to 25. As well, with regard to the financial component of this motion, we've already indicated that we are going to recognize that financial assistance is imperative to having a successful outcome and making a placement viable and stable, so we won't be supporting this motion.

The Chair: Any further debate? If there's none, I'll put the question. Shall the motion carry? All those in favour? Those opposed? Does not carry.

Is it Mr. Fonseca or Mr. Leal for 59(a)?

Mr. Craitor: I move that section 33 of the bill be struck out and the following substituted:

"33. Section 140 of the act is repealed.

"33.1 The act is amended by adding the following sections:

"'Limitation on placement by society

"'141.1 A society shall not place a child for adoption until,

"'(a) any outstanding order of access to the child made under subsection 58(1) of part III has been terminated; and

"'(b) if the child is a crown ward,

"'(i) the time for commencing an appeal of the order for crown wardship under subsection 57(1) or 65.2(1) has expired, or

"'(ii) any appeal of the order for crown wardship has been fully disposed of or abandoned.

"'Where child an Indian or native person

"'141.2(1) If a society intends to begin planning for the adoption of a child who is an Indian or native person, the society shall give written notice of its intention to a representative chosen by the child's band or native community.

"'Care plan proposed by band or native community

"'(2) Where a representative chosen by a band or native community receives notice that a society intends to begin planning for the adoption of a child who is an Indian or native person, the band or native community may, within 60 days of receiving the notice,

"'(a) prepare its own plan for the care of the child; and

"'(b) submit its plan to the society.

"'Condition for placement

"'(3) A society shall not place a child who is an Indian or native person with another person for adoption until,

"'(a) at least 60 days after notice is given to a representative chosen by the band or native community have elapsed; or

"'(b) if a band or native community has submitted a plan for the care of the child, the society has considered the plan.'"

1140

The Chair: Any comments?

Mrs. Jeffrey: The government motion on this matter strengthens and enhances the requirements for band involvement in adoption planning. In the motion, the band or the native community has 60 days after receiving notice to put forward a plan. The society cannot place a child for adoption until those 60 days have expired or the society has considered any plan that has been put forward by the band and native community. It requires early notice in the process, prohibits the child's placement before the band has an opportunity to respond, and provides specific and extended time frames for band participation.

The Chair: Any debate on the motion? If there is none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does carry.

Shall section 33, as amended, carry? Those in favour? Against? It does carry.

Section 34: Ms. Horwath, page 60.

Ms. Horwath: I move that subsection 144(2) of the Child and Family Services Act, as set out in section 34 of the bill, be amended by striking out "and" at the end of clause (a) and adding the following clause:

"(a.1) if the child is an Indian or native person,

"(i) shall give notice to a representative chosen by the child's band or native community of a decision not to place the child with the person who had applied to adopt the child or of a decision to remove the child from the person with whom he or she had been placed for adoption, and

"(ii) shall consult with the representative on the selection of an alternative adoption placement; and."

The Chair: Any debate on the motion?

Mrs. Jeffrey: We believe that government motion 62 is more comprehensive than motions 60 and 61 put forward by the NDP. Motion 62 includes the notice and consultation requirements and also gives the child's band and native community party status where a hearing is held. The government's motion provides for a neutral, independent review by the Child and Family Services Review Board. So we won't be supporting this motion.

The Chair: Any further debate? If there is none, I will put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Mr. Fonseca: 62, please. Sorry, we still have 61. My apologies. I go back to Ms. Horwath.

Ms. Horwath: Since the issue is covered off in the government's next motion, I'll withdraw this one.

The Chair: It has been withdrawn.

Mr. Fonseca, back to you.

Mr. Peter Fonseca (Mississauga East): I move that section 144 of the Child and Family Services Act, as set out in section 34 of the bill, be struck out and the following substituted:

"Decision of society or licensee

"144(1) This section applies if,

"(a) a society decides to refuse an application to adopt a particular child made by a foster parent, or other person; or

"(b) a society or licensee decides to remove a child who has been placed with a person for adoption.

"Notice of decision

"(2) The society or licensee who makes a decision referred to in subsection (1) shall,

"(a) give at least 10 days' notice in writing of the decision to the person who applied to adopt the child or with whom the child had been placed for adoption;

"(b) include in the notice under clause (a) notice of the person's right to apply for a review of the decision under subsection (3); and

"(c) if the child is an Indian or native person,

"(i) give at least 10 days' notice in writing of the decision to a representative chosen by the child's band or native community, and

"(ii) after the notice is given, consult with the band or community representatives relating to the planning for the care of the child.

"Application for review

"(3) A person who receives notice of a decision under subsection (2) may, within 10 days after receiving the notice, apply to the board in accordance with the regulations for a review of the decision subject to subsection (4).

"Where no review

"(4) If a society receives an application to adopt a child and, at the time of the application, the child had been placed for adoption with another person, the applicant is not entitled to a review of the society's decision to refuse the application.

"Board hearing

"(5) Upon receipt of an application under subsection (3) for a review of a decision, the board shall hold a hearing under this section.

"Where child is Indian or native person

"(6) Upon receipt of an application for review of a decision relating to a child who is an Indian or native person, the board shall give a representative chosen by the child's band or native community notice of the application and of the date of the hearing.

"Practices and procedures

"(7) The Statutory Powers Procedure Act applies to a hearing under this section and the board shall comply with such additional practices and procedures as may be prescribed.

"Composition of board

"(8) At a hearing under subsection (5), the board shall be composed of members with the prescribed qualifications and prescribed experience.

"Parties

"(9) The following persons are parties to a hearing under this section:

"1. The applicant.

"2. The society.

"3. If the child is an Indian or a native person, a representative chosen by the child's band or native community.

"4. Any person that the board adds under subsection (10).

"Additional parties

"(10) The board may add a person as a party to a review if, in the board's opinion, it is necessary to do so in order to decide all the issues in the review.

"Board decision

"(11) The board shall, in accordance with its determination of which action is in the best interests of the child, confirm or rescind the decision under review and shall give written reasons for its decision.

"Subsequent placement

"(12) After a society or licensee has made a decision referred to in subsection (1) in relation to a child, the society shall not place the child for adoption with a person other than the person who has a right to apply for a review under subsection (3) unless,

"(a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or

"(b) if an application for a review of the decision is made under subsection (3), the board has confirmed the decision.

"No removal before board decision

"(13) Subject to subsection (14), if a society or licensee has decided to remove a child from the care of a person with whom the child was placed for adoption, the society or licensee, as the case may be, shall not carry out the proposed removal of the child unless,

"(a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or

"(b) if an application for a review of the decision is made under subsection (3), the board has confirmed the decision.

"Where child at risk

"(14) A society or licensee may carry out a decision to remove a child from the care of a person with whom the child was placed for adoption before the expiry of the time for applying for a review under subsection (3) or at any time after the application for a review is made if, in the opinion of a director or local director, there would be a risk that the child is likely to suffer harm during the time necessary for a review by the board.

"Transitional

"(15) This section as it read immediately before the day this subsection came into force continues to apply

where a request to adopt a child or a decision to remove a child was made before that day."

The Chair: Any comments?

Mrs. Jeffrey: We believe that, in appropriate cases, a review of a society's decision should occur before a neutral third party. That's why we've introduced the Child and Family Services Review Board. As I said earlier, those reviews will be timely, neutral and binding. Through the notice and participation, the band can promote consideration and preservation of a child's cultural and community connections. That's what this will do.

The Chair: Any debate on the motion? If there is none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? The motion does carry.

Shall section 34, as amended, carry? Those in favour? Those opposed? Carried.

Shall section 35 carry? Those in favour? Those opposed? It does carry.

Section 36: Ms. Horwath, page 63.

1150

Ms. Horwath: I move that subsection 145.1(1) of the Child and Family Services Act, as set out in section 36 of the bill, be struck out and the following substituted:

"Application to make openness order

"145.1(1) If a child who is a crown ward is the subject of a plan for adoption, and no access order is in effect under part III, the society having care and custody of the child or a birth parent of the child may apply to the court for an openness order in respect of the child at any time before an order for adoption of the child is made under section 146."

People will note that the amendment here deals with the birth parents having a right to apply for openness orders, and that's about it.

The Chair: Any comments?

Mrs. Jeffrey: The motion is not supportable, as Bill 210 will only permit the society to apply for an openness order, and the order can't be made unless all parties consent. Expanding the persons who may apply for an order could destabilize the critical period before adoption finalization if frivolous applications are brought forward. The possibility of a birth family initiating an application could have the unintended consequence of discouraging prospective adoptive parents agreeing to openness arrangements. So we won't be supporting the motion.

The Chair: Is there any debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Ms. Horwath: page 64.

Ms. Horwath: I move that subsection 145.1(2) of the Child and Family Services Act, as set out in section 36 of the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Notice of application

"(2) A society or birth parent making an application under this section shall give notice of the application to."

Again, it's just a matter of recognizing the participation of birth parents.

The Chair: Any questions or debate on the motion?

Mrs. Jeffrey: We reject this motion for the same reasons as previously.

The Chair: Any further debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Is it Mr. Leal? Ms. Jeffrey: page 65.

Mrs. Jeffrey: I move that clause 145.1(3)(c) of the Child and Family Services Act, as set out in section 36 of the bill, be struck out and the following substituted:

"(c) the following entities and persons have consented to the order:

"(i) the society,

"(ii) the person who will be permitted to communicate with or have a relationship with the child if the order is made,

"(iii) the person with whom the society has placed or plans to place the child for adoption, and

"(iv) the child if he or she is 12 years of age or older."

The Chair: Any comments?

Mrs. Jeffrey: Essentially the rationale is, it's vitally important to acknowledge the voices of youth in major decisions affecting their lives. I think we heard that quite eloquently from the young people we had here. Youth may have specific recommendations on how to improve the adoption openness arrangement that will be included in the order. At the hearings we watched some very moving presentations, and we've taken that to heart.

The Chair: Any debate on the motion? If there's none, I'll put the question. Shall the motion carry? In favour? Against? It carries.

Ms. Munro: page 66.

Mrs. Munro: I move that section 36 of the bill be amended by adding the following section:

"Review of effectiveness of openness orders and openness agreements

"145.3(1) Within three years after section 145.1 comes into force or section 153.6 comes into force, whichever is later, the Lieutenant Governor in Council shall, after consultation with the minister, appoint a person who shall undertake a comprehensive review of the effectiveness of openness orders and openness agreements in assisting societies in increasing the number of adoptions of crown wards in Ontario and report on his or her findings to the minister.

"Contents of report

"(2) Without limiting the generality of subsection (1), a report shall include recommendations for improving the effectiveness of this act and the regulations with respect to openness arrangements and adoptions of crown wards.

"Tabling of report

"(3) The minister shall submit the report to the Lieutenant Governor in Council and shall cause the report to be laid before the assembly if it is in session or, if not, at the next session."

The Chair: Any comments?

Mrs. Munro: I would like the committee to give consideration of this amendment. I think all of us recognized the intent of the bill was, as the minister herself was very clear, about increasing the number of adoptions in this

province. As we know, a great deal of this bill, and, I think, with some justification, means that a lot will be covered in regulation; and obviously regulation, while an important part of the legislative process, falls outside of the legislation. It seems to me that there's an opportunity, then, or should be an opportunity, I would argue—that it is important to be able to have a review. There are many parts of this bill, frankly, that are in uncharted waters for the province. It certainly represents some bold initiatives that are being undertaken.

I think it's a recognition as well that children's aid societies, as the major proponent, if you like, in terms of the carrying out of this legislation, have a great deal to do. There has been recognition in the submissions made, from all of the children's aids across the province, of the importance of providing consistency, as well as the importance the role of new technology will play and the importance of training the people who are involved in carrying out this bill.

The issue around alternative dispute resolution has certainly been one that I think has received very large support amongst those who have made submissions to this committee. But again, the methodologies and the actual way in which that will work out are left to regulation, and they are left to the process in terms of when it is going to be most effective and the kinds of issues around determining best practices.

During the public hearings, we heard much about the aboriginal concerns that have been raised. Certainly, by the kinds of amendments we've heard here this morning, there has been an attempt to address those concerns.

There's clearly going to be a significant cost associated with the implementation of this bill.

The fact that there are so many areas where a very good intention is embedded in this piece of legislation—it would seem to me that all members of the House would want to be assured by a review of the nature that I'm proposing, that in fact the legislation is meeting those goals. I would suggest to you that in looking at the amendment I've proposed with regard to the contents of the report, I've specifically suggested here that it include recommendations for improving the effectiveness of the act. Obviously, when you're looking at the kind of direction that is embedded in this bill and all of the things that will have to necessarily fall in regulation—best practices, training and things like that—it seems to me that it behooves us as legislators to recognize there may be issues that arise that quite frankly need to be addressed. This amendment would allow for that kind of report to be made and for recommendations then to go to the minister. Obviously, having it laid before the assembly would mean that it would allow all members of the House to understand and appreciate both the progress and the possible issues around effectiveness, not only of the legislation and the ministry but also its providers through the CAS, through the aboriginal community, through all of the people who have a role to play, and, quite frankly, to never forget our actual goal, which is of course to serve the children of this province in a better way.

1200

I would just sum up and suggest that providing this kind of avenue really puts all of us as legislators on notice that we recognize how important it is to be able to provide the most effective method of ensuring the safety and a brighter future for those children who need that attention.

The Chair: Mr Arnott, do you wish to add something at this point?

Mr. Arnott: Mrs. Munro has provided the committee with a very eloquent and thoughtful presentation as to why this amendment to section 36 ought to be passed by the government. I would certainly concur and agree that there needs to be a review of the effectiveness of openness orders and openness agreements after a three-year period so as to ensure that this legislation, the children's aid societies, the ministry and everything that we're trying to do to protect children is in fact happening, and to ensure that if there are any further changes needed after that point in time, they can be made. I think it's also important that the review and report not just go to the minister but that it also be public, and if it's tabled in the Legislature, of course, it becomes a public document. So I would encourage and urge the government members to support this amendment.

The Chair: Mrs. Jeffrey.

Mrs. Jeffrey: The ministry will be reviewing the effectiveness of the child welfare transformation, including Bill 210 provisions related to openness, on an ongoing basis. We believe the motion is not required. Bill 210 is only one aspect of the transformation. Therefore, we won't be supporting the motion.

The Chair: Is there any further debate? If there is none, I'll put the question. Shall the motion carry? Those in favour?

Mr. Arnott: Recorded vote.

Ayes

Arnott, Horwath, Munro.

Nays

Fonseca, Jeffrey, Leal, Wynne.

The Chair: The motion does not carry.

Shall section 36, as amended, carry? Those in favour? Those opposed? It does carry.

Shall section 37 carry? Those in favour? Those opposed? It carries.

Section 38: Mrs. Jeffrey, page 67.

Mrs. Jeffrey: I move that subsection 153.6(1) of the Child and Family Services Act, as set out in section 38 of the bill, be amended by adding the following paragraph:

"5. If the child is an Indian or native person, a member of the child's band or native community who may not have had a significant relationship or emotional tie with the child in the past but will help the child recognize the importance of his or her Indian or native culture and

preserve his or her heritage traditions and cultural identity."

This amendment reinforces the importance of maintaining cultural ties for aboriginal children. The section is broadened for aboriginal children to include a member of the child's band or native community who does not have a relationship with the child at the time the openness agreement's made, but will help the child maintain their ties. It will permit a member of the child's band or native community to be a party to an openness agreement and broadens and better promotes the likelihood that a child will maintain their cultural ties within his or her community.

The Chair: Is there any debate on the motion? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? The motion does carry.

Page 68, please.

Mrs. Jeffrey: I move that subsection 153.6(2) of the Child and Family Services Act, as set out in section 38 of the bill, be struck out and the following substituted:

"When agreement may be made

"(2) An openness agreement may be made at any time before or after an adoption order is made."

This motion permits flexibility in the timing of openness agreements, recognizing that these matters are consensual and may take time to work through. It also removes the requirement for consents to be signed before entering into an openness agreement, and it's consistent with current practices in private adoptions.

The Chair: Any debate? If there's none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? The motion does carry.

Shall section 38, as amended, carry? Those in favour? Those opposed? It does carry.

Shall section 39 carry? Those in favour? Those opposed? It carries.

Section 39.1: Ms. Horwath, page 69.

Ms. Horwath: I move that the bill be amended by adding the following section:

"39.1 Subsection 158(2) of the act is amended by striking out 'as if the adopted child had been born to the adopted parent' after clause (b)."

This is just to reflect the concern that was raised that the language is in fact outdated and punitive language.

The Chair: Ms. Horwath, I have to declare your motion out of order because that section was not open on the bill. Therefore, there is no debate and there is no motion. The motion is out of order.

Mrs. Jeffrey: Mr. Chair, could I make a suggestion? In fact, it's out of the scope of the bill, but should it receive unanimous consent, then it could go forward.

The Chair: Okay. Are you requesting unanimous support?

Ms. Horwath: I'm sorry?

The Chair: Are you asking that—

Ms. Horwath: Oh, okay. So instead of putting it as a motion, I'll ask for unanimous consent that this motion be considered by committee?

The Chair: Yes, and if that carries—do I have unanimous consent on this? I do. Okay. Now you can put the motion.

Ms. Horwath: Thank you very much, then.

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

"39.1 Subsection 158(2) of the act is amended by striking out 'as if the adopted child had been born to the adopted parent' after clause (b)."

The Chair: Is there any debate?

Mrs. Jeffrey: The government recognizes that these words have a very significant emotional impact for a child and the legal consequences of removing the words are minimal. Therefore, we support the motion.

The Chair: Any further debate? If not, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does carry.

Section 39.1, new, page 70.

Mrs. Jeffrey: I move that the bill be amended by adding the following section:

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

'"Consultation in specified cases

"'213.1 A society or agency that proposes to provide a prescribed service to a child who is an Indian or native person or to exercise a prescribed power under the act in relation to such a child shall consult with a representative chosen by the child's band or native community in accordance with the regulations.'"

The aboriginal leaders have identified inconsistency in both the frequency and the quality of the consultations with societies. This new section would require children's aid societies to consult with an aboriginal child's band or native community in cases where the society is exercising a power or providing a service to the child and his family. Clear expectations regarding consultation will enhance the mutual information-sharing and focus societies on their ongoing obligations to native children and their families.

The Chair: Any debate? If there is none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does carry.

Section 39.2: pages 71 and 71a.

Ms. Horwath: I move that the bill be amended by adding the following section:

"39.2 Part X of the act is amended by adding the following sections:

"'Reports by society

"'213.1(1) A society or agency that provides services or exercises powers under this act with respect to children who are members of or entitled to membership in a band or native community shall provide quarterly reports on the status of those children to the band or native community.

"'Content of report

"'(2) A report prepared under subsection (1) shall,

"'(a) list the names of the Indian or native children;

"'(b) specify the service status of each child; and

"'(c) provide dates and locations of any upcoming events for which the representative of the band or native community is required to be provided with notice under the act.

"'Report by director

"'213.2 The director shall monitor compliance by societies with their obligations under this act to Indian and native persons and to bands and native communities and shall prepare an annual report and make it available to the public in accordance with the regulations.'"

The Chair: Any comments?

Mrs. Jeffrey: The government believes this motion is unnecessary, as enhanced notification and consultation requirements should improve band and native community participation. The ministry will be reviewing the effectiveness of the child welfare transformation on an ongoing basis, including Bill 210 provisions. We won't be supporting the motion.

The Chair: Further debate?

Ms. Horwath: Again, not dissimilar to other motions I've put forward this morning. The point is that by enshrining some of this language in legislation, there's a greater sense that the consultation and respect for aboriginal provisions will be more greatly enforced.

1210

The Chair: Any further debate? If there is none, I'll put the question. Shall the motion carry? Those in favour? Those opposed? It does not carry.

Shall section 40 carry? Those in favour? Those opposed? It carries.

Section 41: page 72.

Ms. Wynne: I move that clauses 216(b.2), (b.3) and (b.4) of the Child and Family Services Act, as set out in section 41 of the bill, be struck out and the following substituted:

"(b.2) respecting applications for a review by the board under subsection 61(7.1);

"(b.3) prescribing additional practices and procedures for the purposes of subsection 61(8);

"(b.4) prescribing the qualifications or experience a member of the board is required to have in order to conduct reviews under subsection 61(8), 68(6) or 68.1(5);

"(b.5) respecting the making of complaints to a society under subsection 68(1) or to the board under subsection 68.1(1);

"(b.6) governing the complaint review procedure that societies are required to follow when dealing with a complaint under subsection 68(1);

"(b.7) prescribing matters for the purposes of paragraph 3 of subsection 68(5) and paragraph 6 of subsection 68.1(4);

"(b.8) prescribing additional orders that may be made by the board for the purposes of clauses 68(10)(c) and 68.1(7)(g);

"(b.9) prescribing practices and procedures for the purposes of hearings conducted by the board under subsection 68(8) or during a review of a complaint under section 68.1."

The Chair: Any comments?

Mrs. Jeffrey: This motion deals with client complaints, decisions and supports. Essentially the Lieutenant Governor in Council will have authority to make regulations for some of the following issues: the practices and procedures for review of the Child and Family Services Review Board under section 61; the qualifications for board members conducting a review; the requirements for accessing the society's complaint process or making an application to the board respecting a complaint; and the procedures and practices the board must follow when reviewing a complaint under section 68.

The Chair: Any questions or debate on the motion? If there is none, I'll put the question. Shall the motion carry? Those in favour? Those against? It carries.

Shall section 41, as amended, carry? Those in favour? Those opposed? It does carry.

Section 42: page 73.

Mrs. Jeffrey: I move that clauses 220(1)(b.1) and (b.2) of the Child and Family Services Act, as set out in section 42 of the bill, be struck out and the following substituted:

"(b.1) governing applications for review under subsection 144(3);

"(b.2) prescribing additional practices and procedures for the purposes of subsection 144(7);

"(b.2.1) prescribing the qualifications or experience a member of the board is required to have in order to conduct reviews under subsection 144(8)."

This issue will deal with client complaints. The Lieutenant Governor in Council will have the authority to make regulations respecting applications for review under section 144, the practices and procedures for review by the Child and Family Services Review Board and the qualifications and experience for that board.

The Chair: Comments or questions? If none, I will now put the question. Shall the motion carry? Those in favour? Those opposed? It does carry.

Shall section 42, as amended, carry? Those in favour? Those opposed? It does carry.

Shall section 43 carry? Those in favour? Those opposed? Carried.

Mrs. Jeffrey: page 75.

Mrs. Jeffrey: I move that section 44 of the bill be struck out and the following substituted:

"44. Section 223 of the act is amended by adding the following clauses:

"'(c) governing consultations with bands and native communities under sections 213 and 213.1 and prescribing the procedures and practices to be followed by societies and agencies and the duties of societies and agencies during the consultations;

"'(d) prescribing services and powers for the purposes of section 213.1.'"

Customary care is recognized in part X of the act and should be preserved as a traditional practice established and defined by First Nations. The leadership of Ontario First Nations has agreed to a process with the ministry to

develop best practice guidelines that will promote the expansion of customary care in Ontario.

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

Shall section 44, as amended, carry? Those in favour? Those opposed? Section 44 carries.

Shall section 45 carry? Those in favour? Those opposed? It carries.

Section 45.1: Ms. Horwath, page 76, please.

Ms. Horwath: I move that the bill be amended by adding the following section:

"45.1 Part XII of the act is amended by adding the following section:

"'Review re: aboriginal issues

"'226. Every review of this act shall include a review of provisions imposing obligations on societies when providing services to a person who is an Indian or native person or in respect of children who are Indian or native persons, with a view to ensuring compliance by societies with those provisions.'"

This was again recommended by First Nations communities. Their concern is that checks and balances be put in place to ensure that the requirement to consult and respect aboriginal provisions is in fact enforced.

The Chair: Is there any debate on the motion?

Mrs. Jeffrey: The minister met with many aboriginal leaders over the months and months of deliberations on this bill and they clearly indicated that the ministry should have regular review of the intent and effectiveness of the legislated obligations of the children's aid societies towards First Nation children, families and communities. Therefore, we support the motion.

The Chair: Any further debate? If there is none, I will take the vote. Those in favour of the motion? It carries.

Section 46, page 77: Mr. Leal.

Mr. Leal: I move that subsection 26(1.1) of the Children's Law Reform Act, as set out in subsection 46(1) of the bill, be struck out and the following substituted:

"Exception

"(1.1) Subsection (1) does not apply to an application under this part that relates to the custody of or access to a child if the child is the subject of an application or order under part III of the Child and Family Services Act, unless the application under this part relates to,

"(a) an order in respect of the child that was made under subsection 57.1(1) of the Child and Family Services Act;

"(b) an order referred to in subsection 57.1(2.1) of the Child and Family Services Act that was made at the same time as an order under subsection 57.1(1) of that act; or

"(c) an access order in respect of the child under section 58 of the Child and Family Services Act that was made at the same time as an order under subsection 57.1(1) of that act."

The Chair: Any comments?

Mrs. Jeffrey: This amendment makes it clear that where there is an application under the CLRA to change or terminate a section 57.1 custody order or an access or restraining order, the orders should be dealt with as if they were made under the CLRA, and the delay provision would not apply. It's a housekeeping amendment.

The Chair: Any further debate? If there is none, I shall put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Shall section 46, as amended, carry? Those in favour? Those opposed? It carries.

Shall sections 47, 48, 49 and 50 carry? Those in favour? Those opposed? All of them carry.

Shall the title of the bill carry? Those in favour? Those against? It carries.

Shall Bill 210, as amended, carry? Those in favour? Those against? It carries.

Shall I report the bill, as amended, to the House? Those in favour? Those opposed? The motion carries.

I thank you all for being so efficient. We have dealt at this level with Bill 210, and I suspect today we will introduce third reading in the House. Thank you to staff and to all of you who participated, and to the people who watched us and commented. Thank you again.

The committee adjourned at 1220.

CONTENTS

Monday 20 February 2006

STANDING COMMITTEE ON SOCIAL POLICY

Chair / Président
Mr. Mario G. Racco (Thornhill L)

Vice-Chair / Vice-Président
Mr. Khalil Ramal (London–Fanshawe L)

Mr. Ted Arnott (Waterloo–Wellington PC)
Mr. Ted Chudleigh (Halton PC)
Mr. Kim Craitor (Niagara Falls L)
Mr. Peter Fonseca (Mississauga East / Mississauga-Est L)
Mr. Jeff Leal (Peterborough L)
Mr. Rosario Marchese (Trinity–Spadina ND)
Mr. Mario G. Racco (Thornhill L)
Mr. Khalil Ramal (London–Fanshawe L)
Ms. Kathleen O. Wynne (Don Valley West / Don Valley-Ouest L)

Substitutions / Membres remplaçants
Ms. Andrea Horwath (Hamilton East / Hamilton-Est ND)
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)
Mrs. Julia Munro (York North / York-Nord PC)

Also taking part / Autres participants et participantes
Ms. Jennifer Gallagher, legal counsel, legal services branch,
Mr. Bruce Rivers, executive director, Child Welfare Secretariat,
Ministry of Children and Youth Services

Clerk / Greffière
Ms. Anne Stokes

Staff / Personnel
Ms. Sibylle Filion, legislative counsel