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Lundi 13 février 2006

Standing committee on social policy

Comité permanent de la politique sociale

Local Health System Integration Act, 2006

Loi de 2006 sur l'intégration du système de santé local

Chair: Mario G. Racco
Clerk: Anne Stokes

Président : Mario G. Racco
Greffière : Anne Stokes

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 13 February 2006

Lundi 13 février 2006

The committee met at 1557 in committee room 1.

LOCAL HEALTH SYSTEM INTEGRATION ACT, 2006

LOI DE 2006 SUR L'INTÉGRATION DU SYSTÈME DE SANTÉ LOCAL

Consideration of Bill 36, An Act to provide for the integration of the local system for the delivery of health services / Projet de loi 36, Loi prévoyant l'intégration du système local de prestation des services de santé.

The Chair (Mr. Mario G. Racco): Good afternoon and welcome to our first day of clause-by-clause. Today we have the standing committee in clause-by-clause considering Bill 36, An Act to provide for the integration of the local system for the delivery of health services.

There is a package of motions which was distributed on Friday afternoon. I understand that the NDP has already given us a number of amendments. Are there any other amendments from anybody else? The clerk has received some amendments from the NDP. Are there any comments, questions or additional amendments from anyone, and if so, to which section?

Ms. Kathleen O. Wynne (Don Valley West): Not at this point.

The Chair: But they will be added.

Ms. Wynne: Yes, Mr. Chair. At this point, I do not have any new amendments, but there may be some at a later date.

The Chair: Yes, that's fine. Thank you for letting us know.

Now the clerk needs to put together these amendments provided to us by the NDP, so I will have to recess. How much time do you need?

The Clerk of the Committee (Ms. Anne Stokes): I don't know—10, 15 minutes.

The Chair: Which would you prefer?

Interjection.

The Chair: Fifteen, so we don't rush the clerk. We will be back at about a quarter after four. Thank you.

The committee recessed from 1600 to 1644.

The Chair: I am told that the meeting can start. I thank you for your patience.

I was asking when we ended if there were comments or any amendments in addition to the ones we have. Are there any additional amendments at this time?

Ms. Wynne: Are you asking, will there be other amendments that come forward?

The Chair: Yes.

Ms. Wynne: There may be one or two that will come forward but not now. That would be tomorrow.

The Chair: Therefore, we can start with the first amendment, on page 1, is it?

The Clerk of the Committee: No, on page 7.

The Chair: Can I have somebody move it on page 7?

After second reading, an amendment to the preamble is admissible only if made necessary by amendments to the bill. Therefore, we will begin with section 1 and deal with the preamble at the end.

Again, I ask the same question. Are there any comments, questions or amendments on section 1, which is on page 7 of your package? Madam Martel, I believe it's your amendment. Do you wish to read it?

Ms. Shelley Martel (Nickel Belt): I have a question, Mr. Chair. I can understand leaving the preamble, but why wouldn't we start, then, on page 3, part I, "Interpretation," section 1?

The Chair: Would the clerk assist me on that, please?

The Clerk of the Committee: Page 3? It's part of the preamble. Page 7 is the first one of these.

Ms. Martel: Are you talking about page 7 of the bill?

The Clerk of the Committee: No, page 7 of your package, the original package.

The Chair: We have 48 amendments, I believe.

Ms. Martel: Got it.

The Chair: We all have this package. It's NDP motion, section 1, page 7. That's what we are dealing with. It's up to the NDP to start. Okay?

Ms. Martel: Thank you, Mr. Chair.

Mr. Kim Craitor (Niagara Falls): I don't have that.

The Chair: If you don't have it, we'll get one for you.

The Clerk of the Committee: You don't have a package?

Ms. Wynne: We've got the actual package.

The Chair: Yes, but they should—don't they have this?

The Clerk of the Committee: No.

The Chair: Oh, that's only for me, then. Okay. I can manage better. That's why—

Mr. Craitor: I still want it anyway.

The Chair: You can start.

Ms. Martel: I move that section 1 of the bill be amended by adding "in a manner consistent with the public interest" after "to provide".

If you look at the purpose of the act, which is where we're starting from today, it says that "The purpose of this act is to provide ..." and it lists a number of things that the bill is supposed to do for Ontarians. This motion is being moved to make it clear that along with some of the other things that are listed there, "public interest" should appear right at the top in terms of why we're doing this and who we're doing this for. This was a recommendation that was made by both the Ontario Nurses' Association and OPSEU.

The Chair: Is there any debate on the motion? If there is no debate, then I will now put the question. Anyone in favour? Anyone against? The motion does not carry.

PC, page 8: Madam Witmer, please.

Mrs. Elizabeth Witmer (Kitchener–Waterloo): I move that section 1 of the bill be amended by striking out "health services, coordinated health care" and substituting "high-quality health services, coordinated health care in local health systems and across the province."

That was an amendment that was requested by the Ontario Hospital Association and also the Council of Academic Hospitals of Ontario in order that there would be access ensured to effective and high-quality patient care. Obviously, that needs to be central to the implementation of the LHINs and that also must be of paramount concern as the LHINs make their decisions. So it's important that this principle be clearly articulated in the legislation.

The Chair: Is there any debate on the motion? If there is no other debate, I will now put the question. Those in favour of the amendment? Page 8 carries.

Madame Martel, page 9, please.

Ms. Martel: Because "public interest" was not defined—I was trying to add "public interest" into the purpose of the act so it would be a principle. I also then had to provide a definition for "public interest." Now the clerk is going to tell me whether or not, because the original motion was voted down, this is now out of order.

The Chair: Just one moment. The clerk is going to check and provide an answer.

1650

Ms. Martel: I can read it into the record while you decide, if you want to do it that way.

The Chair: Go ahead.

Ms. Martel: I move that section 1 of the bill be amended by adding the following subsection:

"Public interest

"(2) Nothing shall be considered to be consistent with or in the public interest for the purposes of this act if it would be contrary to,

"(a) the protection of medicare through the maintenance and expansion of existing publicly funded health services;

"(b) the prohibition of two-tier medicine, extra billing and user fees;

"(c) the principles of public administration, comprehensiveness, universality, portability and accessibility as provided in the Canada Health Act;

"(d) the achievement of a patient-centred system that ensures access to health care based on assessed need and not on an individual's ability to pay;

"(e) access to a continuum of both clinical health and community health care for every Ontarian, including, but not limited to, primary care, public health care, long-term care, home care based on assessed need and community mental health care;

"(f) the protection of the rights of health care workers, including, but not limited to, minimum compensation standards, representation by a trade union and rights that have been conferred under a collective agreement; or

"(g) any value set out in the preamble to the act."

If I might just add to what I said at the outset, I felt it was in our interest to ensure that the purpose of the act was to support the public interest. It was necessary to have a definition for "public interest," and the definition that I put forward makes it clear that the principle of the bill should rest on protecting medicare, prohibiting two-tier medicine, on the principles of the Canada Health Act and the other details that I've articulated. I think those would be important in terms of what we're doing, why we're doing what we're doing, and who we're doing this for.

The Chair: Thank you. Do I have an answer to the question? There is material in the bill making reference to "public interest." Therefore, it's in order.

Ms. Martel: So it is in order.

The Chair: It's in order. The bottom line is it's in order.

Ms. Martel: Thank you. Then I hope the committee will support it.

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

Ms. Wynne: Only that my position is that, in the purpose of the act, the guidelines are on how we're seeing public interest are laid out, so I won't be supporting this motion.

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

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

Section 1.1 is new. Page 10: Mrs. Witmer.

Mrs. Witmer: Section 1.1: I move that the bill be amended by adding the following section:

"Consistency with purpose

"1.1(1) Every decision, plan and regulation made under this act taken under this act by a local health integration network, by the minister or by the Lieutenant Governor in Council shall be consistent with the preamble, with the purpose of the act as set out in section 1, and with the objects of the local health integration networks set out in section 5.

"Same

"(2) Where a decision or plan to which subsection (1) applies is in writing, the decision or plan shall be accom-

panied by a written statement setting out key facts demonstrating that the decision or plan is consistent with the preamble, with the purpose of the act as set out in section 1, and with the objects of the local health integration networks set out in section 5.

"Same

"(3) A regulation to which subsection (1) applies shall include a statement setting out key facts demonstrating that the decision is consistent with the preamble, with the purpose of the act as set out in section1, and with the objects of the local health integration networks set out in section 5."

The rationale is, accordingly, that these recommendations were actually made by the Brewery, General and Professional Workers' Union. They believe that the preamble acknowledges the importance of transparency and accountability in clause (d). It doesn't, however, contain any mechanism to hold the LHINs and the minister accountable. Also, it fails to incorporate accountability and transparency into its operational provision, so they have supported the inclusion of this recommendation.

The Chair: Is there any debate on the motion?

Ms. Wynne: Yes. My position is that this would be a really overly burdensome bureaucratic process that would mean it would be very difficult to move forward with the changes that this bill envisages.

The Chair: Any further debate? I will now put the question. Anyone in favour of this amendment? Anyone opposed? The motion does not carry.

Section 2: Ms. Wynne, page 11, please.

Ms. Wynne: I move that the definition of "accountability agreement" in subsection 2(1) of the bill be amended by striking out "a local health integration network is required to enter into with the minister" and substituting "the minister and a local health integration network are required to enter into".

The Chair: Any debate on the amendment?

Ms. Wynne: What this does is change the definition of an accountability agreement to be consistent with 18(1), and provides that there is a mutual obligation on the minister and the LHIN to enter into the accountability agreement.

The Chair: Any further debate? If there is no debate, I will put the question. Anyone in favour? Opposed? It carries.

Mrs. Witmer, page 12, please.

Mrs. Witmer: Are we doing 11a?

The Chair: I'm sorry, yes. We have 11a, 11b and 11c. I will go to 11a, which is Ms. Martel, please.

Ms. Martel: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'community', in relation to a local health integration network, means,

"(a) every person who received services from the local health system,

"(b) every resident of the geographic area of the local health integration network, and

"(c) every health service provider that provides services in the geographic area of the local health integration network, whether the provider is funded by the local health integration network or the ministry;"

There are a number of references, of course, to community in the bill. There was much concern raised during the course of public hearings about how broad or how narrow community is going to be regarded by the LHINs. This makes it clear that, in the broadest sense possible, the LHINs should be looking at this definition of community as they start dealing with posting of information, consultation etc.

The Chair: Any debate?

Mrs. Witmer: I'm certainly going to be supporting this amendment. I think it does capture and give a comprehensive definition of community. I think it's important that it includes the people who are going to be receiving the services from the local health system.

The Chair: Any further debate?

Ms. Wynne: We'll be bringing forward amendments in section 16 which will deal with this issue.

The Chair: Any further debate? If none, I will now put the question. Anyone in—yes, Ms. Martel.

Ms. Martel: I have a question, though. If I look at—and somebody's going to correct me if I'm wrong; there are lots of folks here today. I'm looking for the definition of community. I understand that there are going to be changes in section 16, but I'm assuming they're changes around notification and input. I'm trying to find the definition of community to understand who's going to be affected by those changes.

The Chair: Ms. Martel, are you asking a question of staff or the political—yes, Ms. Wynne.

Ms. Wynne: I'd ask Ms. Martel to look at government motion 52.

Ms. Martel: "'Community' includes"—I see what you've done. So that's the only place it appears? You're not putting it in the definitions section?

Ms. Wynne: It's in the "Community" section.

1700

The Vice-Chair (Mr. Khalil Ramal): Now we'll put the motion to a vote. Those in favour? Those opposed to the motion? The motion is not carried.

The Chair: The motion doesn't carry. Okay. The next one is 11b. I believe that again is from you, Ms. Martel.

Ms. Martel: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'First Nation programs and services' means all existing and future health-related programs and services directed primarily at First Nation communities and citizens, including, without limitation, those programs and services funded in whole or in part under the 1965 welfare agreement and those programs and services funded in whole or in part by the federal government of Canada."

We heard a number of presentations from representatives of First Nations, at both the individual community level and provincial organizations. This amendment came to us as part of a package of amendments from the Union of Ontario Indians, so I move it on their behalf.

The Chair: Any debate on the motion?

Ms. Wynne: I'm not in a position to support this amendment, because I really don't know what the impact would be. There hasn't been time to analyze it, and it could have a quite far-reaching impact, so I'm not able to support it at this time.

The Chair: Any further debate? If there is none, I will ask for a vote. Anyone in favour of the amendment? Anyone opposed? The amendment does not carry.

The next one is from Mrs. Witmer, 11c.

Interjection.

The Chair: Subsection 2(1); otherwise, I'll give you my page.

Mrs. Witmer: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'health,' in relation to an individual, includes both the physical and mental well-being of the individual; ('santé')"

This is an amendment that has been requested by the Canadian Mental Health Association as well as the Centre for Addiction and Mental Health and the Ontario Federation of Community Mental Health and Addiction Programs. A March 2005 study by CAMH found that as decisions about funding are devolved from the central government, as is happening here, to regional decision-making bodies, there was a greater likelihood of mental health and addiction funding being lost due to what we know to be the case, the public's predominant focus on physical health needs as opposed to mental health needs.

They have requested this, and I strongly support this. I fought for this in Bill 8 as well. We need to recognize the importance of mental health and addiction services. We have to explicitly recognize it in the legislation, because mental health services are equally as important and essential to the health of Ontarians as those that focus on the physical health needs of people. That's why we've chosen to support their request.

The Chair: Any debate?

Ms. Martel: I'd support that request. I also have an amendment to the preamble, which we are dealing with later, which also makes a reference to a broader definition of "health," including physical, mental and social well-being. So I support it both in the preamble and in the section that Mrs. Witmer is moving now.

The Chair: Any further debate?

Ms. Wynne: The reason I'm not supporting this amendment is that in fact we don't have in this bill a list of the definitions of "health," or we don't explicitly talk about the components of health. We're talking about health in the broadest terms. If we include mental health, we need to be looking at what that longer list would be, so we're going to stay with the broad definition of "health," which in inclusive.

The Chair: Any further debate? If none, we'll take a vote. I will now put the question. Anyone in favour? Anyone opposed? The motion does not carry.

Page 12, Mrs. Witmer, please.

Mrs. Witmer: I move that the definition of "integrate" in subsection 2(1) of the bill be amended by adding the following clauses:

"(f) to improve the continuity of patient care within and across local health integration networks,

"(g) to increase collaboration among health service providers within and across local health integration networks,

"(h) to increase information within and across local health integration networks."

This is an amendment that came to us and was requested by the GTA/905 Healthcare Alliance. They are looking at this definition of "integrate," as written, which would ensure that integration decisions are taken with an eye to improving the system and patient care in Ontario. They're hoping this could be supported because they feel that the current definition doesn't speak to that in respect to Ontario.

The Chair: Any debate on the motion?

Ms. Wynne: I'll just say that we're focusing on the process of integration as opposed to the outcome of integration, so that's why we won't be accepting this motion.

The Chair: Any further debate?

Ms. Martel: I guess I can understand that, but I would be worried about the outcome after all of this, what this is going to lead to, where we're going to end up. That's got to be as important as the process to get into it in the first place. With all due respect, I don't understand that rationale.

The Chair: Any further debate? If there is none, I will now put the question. Anyone in favour? Anyone opposed? That's not carried.

Page 13, Mrs. Witmer, again.

Mrs. Witmer: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'service' includes,

"(a) a service or program that is provided directly to people,

"(b) a service or program, other than a service or program described in clause (a), that supports a service or program described in that clause, or

"(c) a service in respect of which a health service provider receives funding from a local health integration network under subsection 19(1). ('service')"

This is a motion that was requested by the city of Toronto and also the Ontario Long Term Care Association. It's a multi-part amendment. First, it moves the definition of "service," as set out in section 23 of the legislation, and puts it in section 2(1) so that it has an application to the entire bill. If this motion is going to be adopted, it will be moved at the appropriate time to delete it, section 23, from the bill. This is required because, as written, the definition of "service" we currently have applies only to part V.

Section 21, which does not currently have a definition of "service," enables a LHIN to require a health service provider to submit to an audit of its accounts and financial transactions. LHINs should not have the ability to audit at will the entire financial status of a multi-service provider. This ability should be limited only to those aspects of an organization's function for which it

receives funding from a LHIN, so not the whole organization.

Secondly, this amends the definition of "service" for greater clarity, so that only those functions for which a provider receives funding from a LHIN are subject to an audit. LHINs should not have the ability to audit at will the entire financial status of a multi-service provider. This ability should be limited only to those aspects of an organization's functions for which it receives funding from a LHIN. Again, this is coming from the city of Toronto.

Finally, the definition of "service" is amended so that the current part (c) of the definition is struck. Adopting this amendment will remove the ability of a LHIN to force a back-office integration that could unintentionally undermine the viability of an organization.

1710

As you know, in the long-term care sector, the majority of homes are part of multi-facility organizations such as chains, or they may be under the jurisdiction of a municipality, such as I know in my own community, the region of Waterloo. They are already maximizing back-office efficiencies through group purchasing and common procedures and processes. That's the rationale for adding the definition we have here. It's on the request of both, as I say, the city of Toronto and the Ontario Long Term Care Association.

Ms. Wynne: I think we deal with part of this in another section. I understand that Mrs. Witmer isn't satisfied with the definition of "service" staying in section 23. I'm going to have to ask staff to comment on the auditing portion of this.

The Chair: Can staff have a seat at the front here, please. May I have your name, please?

Ms. Tracey Mill: Tracey Mill. I'm the director of the LHIN legislation project with the Ministry of Health.

The Chair: Thank you. Can you answer the question, please?

Ms. Mill: The question was with respect to the auditing provisions and the requirement or the ability for LHINs to audit any financial transactions. This is really just to ensure, again, the accountability for any public funds that are going to a health service provider.

Mrs. Witmer: Are they going to have the ability to audit a multi-service provider?

Ms. Mill: For those funds that are provided by the LHIN, as accounted for through the accountability agreements and the service accountability agreements that would be negotiated with those health service providers.

Mrs. Witmer: But not the entire organization?

Ms. Mill: It depends on how that organization might be organizing its finances. If those finances are commingled with other aspects of their businesses, again, it's in order to ensure accountability of public funds. They may need to look at those other aspects of the organization's functions or business.

Mrs. Witmer: So you could look at everything within the city of Toronto? This is their concern.

Ms. Mill: All I can say is that it's to ensure there is an ability to identify and have appropriate financial reporting on any public funds that are given to that organization. If that organization's accounting practices would have funding intermingled or commingled with other funding that it receives, then in order to ensure accountability, the LHINs would need to be able to look at those financial reports.

Mrs. Witmer: I guess that's a concern—the scope—that has been expressed by both the city and the Ontario Long Term Care Association. There doesn't seem to be any restriction at the current time, and that's why we have supported them and tried to clearly define the scope of the audit of the particular service. Right now it appears that they can do almost whatever they want.

This gives the government a tremendous amount of latitude in auditing parts of any organization, whether it's a multi-service provider in the long-term-care sector or a municipality that delivers services that would come under the auspices of the LHIN. That's of tremendous concern to people as to the new and expanded powers this gives to the government.

Ms. Wynne: Mr. Chair, could I ask a question? Are you done?

Mrs. Witmer: Yes, go ahead, Kathleen.

Ms. Wynne: Could I just clarify? Is that accurate, that there would be a new power to audit a whole organization, or would it be that the auditor would have the opportunity to look at the finances to determine the extent to which the entity it was auditing was related to the larger organization? I just need to understand why we're maintaining it this way.

Interjection.

Ms. Mill: Sorry; I'm just clarifying that. The powers that would be given to the LHINs in terms of auditing right now are not any different than the ministry's current powers to audit agencies that we're funding. The intent is not to expand any current authorities that we have; it's simply a recognition that the funding and the accountability relationship will now be, if the bill is passed, between the LHINs and the health service provider. It's really what the ministry would do in this instance now.

Ms. Wynne: So it's no expansion of power that should be threatening the city; it's a transferral of power from the ministry to the LHIN.

Ms. Mill: Yes.

Ms. Wynne: Thank you.

Mrs. Witmer: Can you guarantee that there is absolutely no change in the ability of any municipality to perform this audit function or, in the case of the long-term-care sector, these multi-facility organizations, such as some of the chains?

Ms. Mill: The policy intent and what is meant to be reflected in the legislation is not to change the current situation with respect to the audit capacities.

The Chair: Any further questions? There are not. Any further debate on the motion? There is none. Now I will put the question. Those in favour of the amendment? Those opposed? The amendment does not carry.

The next one is page 14. Ms. Witmer, please.

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

"Public interest

"(1.1) In this act, the public interest in health care includes interest in,

"(a) timely access to local health care;

"(b) continuity of health care;

"(c) good coordination of local health services;

"(d) quality care and treatment of individuals;

"(e) quality management and administration of health service providers;

"(f) sustainability of the health system;

"(g) efficient and effective management and delivery of health services;

"(h) maximized patient mobility;

"(i) maximized patient ability to make choices about his or her own health care;

"(j) promotion of a strong, stable and appropriate health services workforce;

"(k) efficient and effective integration of provincial and local health systems;

"(l) provincial plans and priorities for the health system; and

"(m) any other prescribed matter."

This is an amendment that has been requested by a number of presenters: the Ontario Hospital Association, the Canadian Hearing Society and the GTA/905 Health Care Alliance. In fact, some individuals have recommended some very specific wording.

What we're trying to do here is ensure that subsections 26(1) and 28(1), which govern the making of integration decisions and orders by LHINs and the minister, make reference to the public interest. As there is no definition of public interest in the bill as currently written, there is a concern that the interpretation of the phrase will be left up to the LHINs and the minister. So the definition of "public interest" that we are speaking to here is very similar, if you would compare, to what presently appears in the Public Hospitals Act and also in the Commitment to the Future of Medicare Act.

What this definition does is it serves to ensure that patient care and community needs, which this bill is all about, are given due consideration and do provide safeguards against what may be perceived as arbitrary decision-making. That is the rationale for this definition of the public interest.

The Chair: Any debate on the motion?

Ms. Martel: I'm supporting the amendment, although Ms. Witmer will understand when I say I like my definition of public interest better. But that's all right.

I just thought it was broader; sorry, Elizabeth.

Mrs. Witmer: That's okay, Shelley.

1720

Ms. Martel: You've got to have some kind of definition here. Right now, all that section 26 says under "Required integration" is that this will happen, a LHIN will make copies available to the public, "if it considers it in the public interest to do so." Well, who's defining that? Who's setting those parameters? Who's responsible for that framework? The last thing I want is to see 14 different LHINs have different definitions of public interest.

The second thing I don't want to see is that the definition be so useless as to, frankly, not apply at all and that decisions can be made willy-nilly without any kind of understanding of what that means with respect to the provision of services, people's access, whether the Canada Health Act is even considered, whether the principles that were articulated in Bill 8 are being upheld etc.

You didn't like my definition of public interest but you'd better get some kind of definition of public interest in this act if there's going to be any kind of uniform standard by which the boards of LHINs make some of these decisions.

The Chair: Any further debate?

Ms. Wynne: Just to comment. I think I've already commented that the purpose clause lays out the guidelines around public interest for this bill. We're also going to be bringing an amendment to the preamble that references the Canada Health Act and the Commitment to the Future of Medicare Act so the principles embodied therein apply. So I won't be supporting this motion.

Ms. Martel: Can I just ask one question? If a LHIN is to determine what is in the public interest, they're to look at section 1 and take from that what they should base their decisions on? I've got to tell you, there's not much there that would leave any kind of uniform standard across LHINs for making the kinds of decisions that they're going to be making about some of these services.

I'm looking at the interpretation, but I just fail to see what it is in that particular section that is going to result in a uniform definition or uniform principle being applied or a principle being applied that really takes into account those kinds of factors that should be in the public interest—access, people having to travel, what that means for workers who are disrupted etc. Those are all items that should be taken into account through this process, and I don't see where in the bill they are going to be taken into account.

Ms. Wynne: Again, I think that many of the things that Ms. Martel is talking about will be captured by the principles of the other pieces of legislation that are in place in the province.

Mrs. Witmer: Do you know what? I think this is rather frightening that we would not include a definition of public interest in this particular piece of legislation, which has such far-reaching consequences for both patients and communities in Ontario.

We are going to see—and Ms. Martel has made reference to it—some very arbitrary decision-making on the part of 14 different LHINs and possibly the minister. I would think, when we're moving forward and giving so much responsibility to these LHINs, we need to clearly articulate what the public interest definition is in this piece of legislation and provide some safeguards for both patients and communities in Ontario.

Ms. Martel: It's not as if we don't have some definitions of public interest already. There's a definition in the Public Hospitals Act. That may be where this has been pulled from, and I apologize that I don't know that

for sure. But my recollection on Bill 8—and someone will correct me if I'm wrong—is I think we spent a lot of time in Bill 8 sorting out a definition for public interest for that particular piece of legislation. So I don't even know why we wouldn't use a definition that the government, I believe, used in a previous bill that the Legislature dealt with; that is, Bill 8.

Mrs. Witmer: I can speak to that. This definition of public interest that we have put in place here is similar to that of the Public Hospitals Act. It's also similar to Bill 8, the Commitment to the Future of Medicare Act. So it's not as though this motion is new or different. I don't know why the hesitation to include it here.

Ms. Wynne: I just refer folks to the preamble and to the objects. It's in those two sections that we lay out what we mean by best public interest and the guidelines around how the services should be provided.

The Chair: Any further debate? If there is none—

Ms. Martel: Can I have a recorded vote, please?

Ayes

Arnott, Martel, Witmer.

Nays

Craitor, Fonseca, Leal, Rinaldi, Wynne.

The Chair: That does not carry.

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

Section 2.1: Ms. Martel, page 15, please.

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

"Aboriginal rights

"2.1 This act does not abrogate, derogate from or otherwise affect,

"(a) any aboriginal or treaty right that is recognized and affirmed by section 35 of the Constitution Act, 1982; and

"(b) the fiduciary obligation of the government of Canada to provide quality health care to First Nations peoples."

A bit of background here: This amendment along with the next one that's going to follow it were amendments that were shared with the committee in the presentation that was made by the Union of Ontario Indians last week. They were also shared, in terms of sentiment if not the actual wording, in a presentation earlier in the week that was made by the Chiefs of Ontario. We had clarification with other aboriginal organizations that a non-derogation clause, for example, would be absolutely necessary to make it clear that nothing in the LHIN legislation, as proposed, was going to undermine or abrogate treaty and constitutional rights.

I am putting these forward and I'm seriously requesting the committee's support because—I think I have a copy of the amendments that the government is putting forward in this regard. If I'm wrong, I apologize, but I'm fairly certain that what I got from the chiefs is a reflection of the government amendments, which are very limited. One says:

"(2) The minister shall establish the following councils:

"1. An aboriginal and First Nations health council to advise the minister about health and service delivery issues related to aboriginal and First Nations peoples...."

"(3) The minister shall appoint the members of each of the councils established under subsection (2) who shall be representatives of the organizations that are prescribed." I'm assuming those are going to be aboriginal organizations.

Under a different section, section 16:

"(1.3) In carrying out community engagement under subsection (1), the local health integration network shall engage,

"(a) the aboriginal and First Nations health planning entity for the geographic area of the network that is prescribed;"

I can tell you that in letters I have received, and I am assuming others have received, First Nations organizations, at least this letter coming from the Union of Ontario Indians, make it very clear that "the present amendments as received by members of the task force are not acceptable." There were other criticisms raised in the bill, but that was the very last line and made it very clear that what was put to them by the government was not acceptable.

Perhaps something has changed since Thursday last, and then again maybe something hasn't. My strong recommendation is, we heard very clearly that First Nations, both community members and also provincial leadership who are elected to their positions, felt very strongly that the handling of this legislation by this government was sadly lacking at best, especially in light of the government's new approach and also the blueprint for the First Ministers, which sets out how aboriginal people are supposed to be consulted and drawn into discussions about aboriginal health. So it seems to me that the least we can do is agree to some amendments that they actually put forward.

The process was already a very bad process and a very bad way to start a new relationship. The amendments that I gather—and someone will correct me if I'm wrong—were given to the chiefs, they have stated in a letter to us, are not acceptable, and I think it's high time that the committee actually agree to some amendments that were put forward by aboriginal organizations themselves. I think to do any less is just going to make what is already a very bad situation a whole lot worse.

1730

The Chair: Any debate?

Mrs. Witmer: We will be supporting this amendment that has been put forward by the NDP, as well as the next one, in regard to the aboriginal community. We have received numerous letters from the First Nations, as probably other members have as well, indicating their disappointment with the provincial government on the

handling of this Bill 36, because regrettably there was a report that had not been tabled at the time this bill came forward.

They have some very strong reservations about the commitment this government made to them. I think they feel betrayed in the way Bill 36 has landed on the table and really does not deal with the whole issue of what they say are matters such as LHINs that should be managed on a government-to-government basis. That has not happened. They make it very clear that First Nations are not stakeholders, and yet that's how the government has attempted to treat the First Nations. So I think it is important that we respect the original government commitment and try to live up to it. For that reason, I would very strongly support the two amendments that the NDP have here.

The Chair: Any debate?

Ms. Wynne: First of all, I want to say that I'm not a lawyer. I want to make that clear. The minister has been in conversation with both the aboriginal groups and the groups from the francophone community, and the amendments that we're going to put forward are the ones that the minister has deemed to be appropriate.

I will put forward the arguments for why we're not supporting other amendments, but as a member of this committee and a member of the government, taking advice from legal advisers and from the minister, I have to rely on that advice, because those are the people who have been having the face-to-face conversations.

On the issue of this particular amendment, my understanding is that this would be redundant, because the rights that are to be protected here are already protected under section 35 of the Constitution. That's why in this case, we won't be supporting this motion.

The Chair: Further debate?

Mr. Ted Arnott (Waterloo–Wellington): I was very impressed with the number of presentations that were made to this committee by First Nations organizations and individuals. There is obviously a very serious concern because of the lack of consultation while the bill was being drafted. While the parliamentary assistant may offer this committee some reassurance that the government is going to look after the interests of those people who are concerned about this issue, given the track record of the government in the lead-up to the introduction of Bill 36, I don't share her confidence. I think this amendment that has been brought forward by Ms. Martel is in the public interest and would ensure that, as a committee, we're seen to be responding to the legitimate concerns that the First Nations organizations put forward.

I would encourage the government members to give serious consideration to supporting it. Hopefully they will, and if there's some indecision on their part, perhaps they'd be willing, if they're thinking of voting it down, to stand down this vote, for consideration, perhaps tomorrow. I'm just offering that as a suggestion. I would hope that they will give it serious consideration.

Ms. Martel: A couple of points: I'm not a lawyer either. I'm not sure that I understand the rationale. The Constitution Act is a federal piece of legislation. I would hope that if portions of it can be applied to provincial law to make it clear what aboriginal rights are and how they can be protected, then we should be looking at doing just that, to make it very clear in this provincial piece of legislation that there is nothing we are doing as a province that will undermine treaty rights. I don't understand all the legal niceties of it. If it's redundant, that says to me that it's not going to have an impact one way or the other, so let's put it in the legislation and at least respond to one amendment that was put to us by a broad cross-section of First Nation communities and provincial organizations that came before this committee.

The second thing I'd like to say is that the two amendments that I understand the government is going to put forward were sent to aboriginal organizations, they were asked for their comments and they got a letter back saying, "The present amendments as received by members of the task force are not acceptable." We are clearly not responding to the concerns that were raised by aboriginal people, first during the course of the public hearings and with respect to all of the consultations that went on when this bill was introduced. We were told they were many and we were told by aboriginal organizations that they weren't very satisfactory, so what the government is actually planning to bring forward are amendments that aboriginal organizations have already told this committee are not appropriate, are not enough and are "not acceptable."

Thirdly, here's what the letter also says. This is a February 9, 2006, letter: "The Union of Ontario Indians are concerned that the province of Ontario has failed to properly consult with the First Nations of Ontario on this sweeping legislation that has a genuine possibility of impacting negatively on the aboriginal, inherent and treaty rights in health of every First Nations member in the province of Ontario." That's a pretty strong concern that's being raised. It's a serious criticism that's being levelled at this government. I think we should take it to heart. We have had a bad process already with respect to First Nations' participation in this legislation. We clearly heard that from people who were involved at a technical level on the task force and from Chief Phillips, who was a task force member. That was well documented for us, and it was reiterated in the public consultations.

So for goodness' sake, can we at least do something right during the course of this bill and actually pass an amendment that First Nations want, an amendment that clearly says that nothing in this bill is going to undermine their treaty or health care rights? I don't think that's too much to ask. Frankly, I think if we don't do this, it will make a process that has been really bad a whole lot worse, and I just don't know why we'd want to go down that road.

The Chair: Debate?

Ms. Wynne: I'm actually going to ask staff to comment in a second on this. I think that it doesn't make anybody on this side happy that people aren't happy that we haven't reached an agreement. That's not something that pleases us, but the reality is that we've had con-

versations, the minister has been in conversation with the aboriginal and francophone communities, and these are the amendments that they and staff have deemed to be the most appropriate in terms of implementing the local health integration networks. The amendments that you refer to that we're bringing forward put in place an ongoing dialogue on the delivery of services to the aboriginal community. Having said that, there is a complicated relationship between and among the provincial government, the federal government and the aboriginal community, and that relationship is not going to be untangled with one piece of legislation. I think that the ongoing dialogue is important.

I'm going to ask staff to comment on the redundancy and the constitutional issue here, if that would be okay.

Mr. Robert Maisey: My name's Robert Maisey. I'm legal counsel with the Ministry of Health and Long-Term Care and the Ministry of the Attorney General. I can't comment on the process pieces, but I'll try to comment on the legal issues. It's a little unusual to have clauses like this in provincial legislation, partly because the bill has to be consistent with the Constitution Act of 1982. So the section may not have any additional legal meaning, but by putting it into an act like this, it suggests that there may be additional legal meaning and it's unclear what that legal meaning is. For example, it's not certain what rights could be affected by this bill, so having a clause like it in the statute suggests that there is something that is affected. The concern is that that would lead to litigation over what those rights might be.

1740

Ms. Wynne: Could I just be clear, then? In other words, if we put this in, there would have to be some longer explication of exactly what those rights were. That's a complicated process that we don't usually include in provincial legislation. Is that—

Mr. Maisey: That's a fair comment. It potentially changes rights or adds to rights that don't exist. It's just unclear what this clause means.

Ms. Wynne: Thank you.

Ms. Martel: Are treaty rights not defined already?

Mr. Maisey: Treaty rights would have to be defined with respect to what the treaty is, to my knowledge—which treaty applies to which aboriginal First Nation people.

Ms. Martel: But treaty rights have already been outlined in law, depending on which First Nation you're talking about or which grouping of First Nations, whether it's treaty 3 or treaty 9, right?

Mr. Maisey: I think there's a lot of litigation over what those rights are. In our consultation with various people, there may well be, but as far as I know today, we're not aware of treaty rights in Ontario that give health rights. Again, it comes back to that this section in a statute dealing with health issues, not land issues or resource issues, may not add any rights or clarify any legal entitlements.

Ms. Martel: Except you'd be aware of treaty rights with respect to NAN that impact the province because NAN First Nations are signatories, along with the provincial and federal government. They are unique in that respect. They have rights that were entered into along with the province of Ontario. So in terms of rights, I think at least with the NAN communities, those are more explicit because they are signatories to a treaty that would involve both provincial responsibility and federal responsibility to those First Nations.

Mr. Maisey: I'm sorry. I'm not personally aware of that particular treaty. I was informed that we were not aware of health rights that would be part of a treaty.

Ms. Martel: We have a difference of opinion, I think. I'm not a lawyer. I appreciate your explanation, but my argument is that because NAN communities, which are primarily in northeastern Ontario up to the James Bay coast, were signatories to a treaty not just with the federal government but with the province, they more than any other group—and I'm not trying to undermine other aboriginal groups—actually do have some rights around health care, because health care is both provincially and federally mandated.

Mr. Maisey: As I said, I'm sorry, but I'm not aware of the particular content of the treaty in question. I was informed that we didn't have treaty rights that spoke specifically to health care.

Ms. Martel: Okay.

The Chair: Excuse me. Could I have Mr. Wood comment on this, please?

Mr. Michael Wood: I'd like to make a comment from the perspective of legislative drafting. If we were to put a section in like this, it would raise the question as to why we don't put this type of section into other legislation. Rights under the Constitution apply and affect the federal government and the provinces anyway. As I say, if we were to put this in here, it would somehow suggest that, unless you saw this in every single piece of legislation, somehow rights in the Constitution did not bind the province.

The Chair: You still have the floor.

Ms. Martel: I guess I'd respond—and again, I'm not a lawyer, so I'm sorry if I'm being tedious, but rights that were granted to aboriginal people are a little bit different than rights granted to other people. You're talking about a founding people that signed treaties. I have amendments for francophones too because I want to see them participate more fully in the process, but with all due respect, the rights they have are different because they were not signatories to a treaty with any federal or provincial government. That's where I'm coming from in saying that our obligation is higher, from my perspective, with respect to aboriginal people because of that history and because of the existence of those treaties, which are not the same for any other group in the country.

The Chair: Ms. Witmer and then Ms. Wynne. I believe you had a question a few minutes ago.

Mrs. Witmer: I think these amendments that are being proposed and supported by the First Nations and the aboriginal community really speak to the fact that, as a result of the approach that has been taken by the government, contrary to what had been promised, it puts

them in a position where they're not sure they can trust the government totally moving forward. The Chiefs of Ontario state that the amendments that have been proposed by the government do not reflect the necessary partnership required. I think we have to seriously consider how we have treated these individuals. In fact, they say that the development of the LHINs project has not been consistent with the spirit and letter of the health blueprint, and that's why they are insisting on an exemption or a specific clause that protects current and future health programs and services. Again, they stress the fact that they're not to be treated as stakeholders, as the government has regrettably attempted to do, but should be treated on a government-to-government basis. I think we find ourselves in a dilemma now where we are trying to afford them some protection in dealing with these amendments. I guess if the consultation had taken place prior to the drafting of the legislation, and there had been real consultation government to government, we wouldn't be facing the predicament that we have today.

The Chair: Ms. Wynne.

Ms. Wynne: I do appreciate the lofty sentiments of people who have been members of previous governments. But given that this is the first time in provincial history that there is a mandated voice for aboriginal people in a government-to-government forum over provincial health planning, I think we're on pretty safe ground in terms of the way we're moving forward. So I think we'll be sticking with our amendments.

The Chair: Any further debate?

Ms. Martel: As a member of a government that was a signatory to the statement of political relationship with aboriginal peoples, which set out a process for resource allocation, for example, in commercial fisheries, just to give one example—logging rights were others—I think there has been a clear indication previously, and a clear process previously, where First Nations were adequately consulted and involved in planning. I regret that it has not been the case with this particular piece of legislation, nor was it with Bill 210. Now we are here picking up the pieces, and we shouldn't have to be, especially in light of the statement made by the government just this summer that there was going to be a new relationship.

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

Ms. Martel: I would like a recorded vote.

Ayes

Arnott, Martel, Witmer.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The amendment does not carry.

There is a 15a. I believe it's from you, Madam Martel.

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

"Delivery of aboriginal health care

"2.2(1) Nothing contained in this act and no action taken under this act shall be interpreted to or have the effect of removing responsibility for the delivery of health services and programs that are directed primarily at First Nations peoples from the ministry and transferring it to another person or entity.

"Same

"(2) Despite subsection (1), a First Nation and a local health integration network may, with the consent of the ministry, enter into an agreement by which all or part of a health service or program that is directed primarily at First Nations peoples be administered or delivered, with respect to the First Nation entering into the agreement, by the local health integration network."

Again, that was the third of the three summary recommendations, specifically with respect to language for amendments, that were presented to the committee by the Union of Ontario Indians last week on February 7. I would encourage members of the committee to support this amendment, given what has gone on in this process to date, and given that the amendments that are coming forward from the government are not deemed to be acceptable by First Nations involved in this process.

The Chair: Any debate on the motion? If there is no debate, I will now put the question.

Ms. Martel: A recorded vote.

1750

Ayes

Arnott, Martel, Witmer.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The amendment does not carry.

We go to section 3: Madam Witmer, page 16.

Mrs. Witmer: I move that section 3 of the bill be amended by adding the following subsections:

"City of Toronto

"(1.1) Despite subsection (1), the geographic area of the health integration network of Toronto Central shall consist of the city of Toronto.

"City of Toronto

"(5) The Lieutenant Governor in Council shall not make any regulation under subsection (4) that would have the effect of changing the geographic area of the local health integration network whose geographic area consists of the city of Toronto."

As you know, the city of Toronto appeared before us. They are extremely concerned about the fact that this city is going to be served by a total of five different LHINs and only one of those five, which is the Central LHIN, which contains, I think, about 1.5 million people, is going to be fully within the boundaries of the city of Toronto. In fact, if we take a look at these other LHINs, they are very far-reaching into communities that really don't have any community of interest with the city of Toronto at all.

As a result, if you take a look at some of the rural areas, they don't have the same urban health and social service issues that we see in the city of Toronto.

If we take a look at this amendment which has been put forward by the city of Toronto, it would ensure that the entire city of Toronto is served by only one LHIN, meaning that all the city-run health providers, such as the long-term-care homes in the city, would report to one LHIN. Unless this model is adopted, the city of Toronto believes that their powers as a government—and they have been given new powers by the government recently—and its abilities as a systems manager are going to be severely compromised.

They also think that what else is going to be compromised will be their access to equal services if the LHINs that are going to be governing the city of Toronto take different funding decisions for the health service providers, which well could happen. They want this amendment because they want to ensure that everyone living within the boundaries of the city of Toronto, in all parts of the city, would have equal access to the same level of service. So we put this forward on behalf of the city of Toronto.

The Chair: Any debate?

Ms. Wynne: I'm speaking both as a member of this committee and as, I think, the only Toronto member who's sitting around this table. I think this would be a very big mistake. I represent a riding that has a number of institutions to which people come from a variety of places around the province. The city of Toronto has to relate to places outside its boundaries, and this would be an attempt to build an artificial wall around the city of Toronto in terms of health planning. It would be a big mistake and I won't support it for those reasons.

Mr. Arnott: I've listened to the parliamentary assistant's explanation for her position on this amendment, but I'd like to hear a little bit more perhaps from the staff as to the rationale for dividing the city of Toronto up into five different LHINs. I was absolutely surprised when I first learned that they were going to divide up the city of Toronto into five LHINs. It seems—

Ms. Wynne: We've gone over this a number of times. What the minister did was look at referral patterns. The LHINs were devised based on those referral patterns. We can have a debate about whether they were accurate or not, but the referral patterns are not contained within the political boundary of the city of Toronto. That's why the LHINs were arranged the way they were. I don't think there's any other more complicated answer to it than that. That is the way they were established.

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

Mr. Arnott: I know we've heard that that is the rationale for the establishment of the LHINs, but there are examples all across the province where the referral patterns are not entirely respected. For example, the LHIN that my riding is included in is called Waterloo-Wellington. The fact is, the referral patterns, for example, from the Palmerston hospital, in most cases, go to Stratford, which is outside the boundaries of the LHIN. Obviously geographic boundaries were considered to be the primary consideration in the case of the establishment of Waterloo-Wellington. I'm not criticizing that; I'm just asking, why was that not the case in Toronto?

I would suggest to you that there's perhaps another reason. I don't know if it's that the government is concerned about one LHIN representing all the city of Toronto becoming too powerful perhaps, but you obviously have to concede that if you—

Ms. Wynne: Didn't we deal with that with your government?

Mr. Arnott: If, in fact, what you're saying is true, which is of course that you need to have these LHINs to provide for local decision-making, you're going to have a hodgepodge of five different sets of rules all across the city of Toronto—a patchwork quilt of different rules, is what I'm trying to say. You're going to experience that, and I think that, over time, that is going to weaken the structure you're trying to set up, at least in terms of popular support.

I'm surprised you would reject the city of Toronto's position that they've expressed here at committee and just dismiss out of hand the city of Toronto, which represents the whole city. You just dismiss it out of hand. I'm surprised that you would say that as a Toronto member.

The Chair: Ms. Martel?

Ms. Martel: I think we heard during the course of the public hearings that some of the referral patterns don't make sense at all—people from Sarnia going to Windsor when in fact they normally go to London, so I don't want to use referral patterns as the basis for much with respect to this legislation given what we heard.

One of the concerns that particularly struck me with the city of Toronto is that they operate 10 municipal homes for the aged. You would think there's probably a common set of standards, a common principle with respect to that operation, which cannot be guaranteed when those homes fall into different LHINs. I would assume they are the only city where that has happened because I'm assuming they're the only city that is divided up into a number of different LHINs.

There are some comments about referral patterns which I don't hold much stock in given what we heard, but clearly a legitimate concern that I thought was raised from the perspective of the city funding these organizations was, what guarantee did they have about what the quality of service will be in those homes when they now belong to five different LHINs versus the situation right now where the city, because of the city boundaries, has some say over what the policies, procedures and the framework are for providing service in those homes.

The Chair: If there's no further debate, I will now put the question. Is there anyone in favour of the motion? Against? The motion does not carry.

It is 6 o'clock, and at this point the meeting comes to an end.

We thank you for your participation, and we will come back tomorrow at the same place at about the same time, 3:30. Thank you.

The committee adjourned at 1800.

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Also taking part / Autres participants et participantes
Ms. Tracey Mill, director, LHIN legislation project, Ministry of Health and Long-Term Care
Mr. Robert Maisey, counsel, legal services branch, Ministry of Health and Long-Term Care

Clerk / Greffière
Ms. Anne Stokes

Staff / Personnel
Mr. Michael Wood, legislative counsel