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Jeudi 30 novembre 2006

Standing committee on the Legislative Assembly

Comité permanent de l'Assemblée législative

Mandatory Blood
Testing Act, 2006

Loi de 2006 sur le dépistage
obligatoire par test sanguin

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Thursday 30 November 2006

Jeudi 30 novembre 2006

The committee met at1548 in committee room 1.

MANDATORY BLOOD TESTING ACT, 2006

LOI DE 2006 SUR LE DÉPISTAGE OBLIGATOIRE PAR TEST SANGUIN

Consideration of Bill 28, An Act to require the taking and analysing of blood samples to protect victims of crime, emergency service workers, good Samaritans and other persons and to make consequential amendments to the Health Care Consent Act, 1996 and the Health Protection and Promotion Act / Projet de loi 28, Loi exigeant le prélèvement et l'analyse d'échantillons de sang afin de protéger les victimes d'actes criminels, le personnel des services d'urgence, les bons samaritains et d'autres personnes et apportant des modifications corrélatives à la Loi de 1996 sur le consentement aux soins de santé et à la Loi sur la protection et la promotion de la santé.

The Chair (Mr. Bob Delaney): Good afternoon, everybody. We are hoping to deal with our committee expeditiously this afternoon. We're here for clause-by-clause consideration of Bill 28, An Act to require the taking and analysing of blood samples to protect victims of crime, emergency service workers, good Samaritans and other persons and to make consequential amendments to the Health Care Consent Act, 1996 and the Health Protection and Promotion Act. Jennifer is not the only one who can read fast.

Are there any comments, questions or amendments to any section of the bill, and if so, to what section?

Mr. Peter Kormos (Niagara Centre): I don't think this is going to be a lengthy process this afternoon. Quite frankly, I'm particularly appreciative of amendment 2. I would only ask, as we go through the amendments—I think I understand the bill; we had considerable hearings on that last time around—that the parliamentary assistant explain the motive behind the amendments, just so everybody understands.

The Chair: I assume the parliamentary assistant is okay with that?

Mr. Bas Balkissoon (Scarborough–Rouge River): Okay with that, Mr. Chair.

The Chair: May I have consent to do block consideration of sections 1 to 3, there being no amendments proposed? Agreed.

Shall sections 1 to 3 carry? Carried.

Amendments to section 4?

Mr. Balkissoon: I move that subsection 4(3) of the bill be struck out and the following substituted:

"Timing of hearing

"(3) Subject to subsection (4) and despite subsection 75(2) of the Health Care Consent Act, 1996, the board shall commence and conclude the hearing within seven days after it receives the referral of the application.

"Extension

"(4) The board may commence or conclude the hearing within a longer period than the seven days required by subsection (3) if all the parties to the hearing consent to the extension."

Just a simple explanation: The government is quite pleased that if all parties agree and the CCB wishes to extend the hearing, so be it.

The Chair: Any comments?

Mr. Kormos: The amendment is clear; it speaks for itself. I think the question is, why? If you're beyond seven days and you're at the appeal level, so to speak, at this point it becomes pretty moot, doesn't it, in terms of the prophylactic exercise that a victim might want to entertain? You're talking at least seven days, eight days, nine days after the person has come into contact with it.

Mr. Balkissoon: If I could clarify, the whole exercise of PEP would already have been started. The idea of this bill is to have the applicant put at ease that the person they came in contact with is not infected with any of the diseases that will be spelled out. The whole idea here is that the person responding to the blood sample may be able to provide other evidence that they're free and clear of these diseases, and if all parties can agree that they can supply this information, then—

Mr. Kormos: Okay. I'm not going to oppose the amendment.

Mr. Balkissoon: That's why we're putting it in the bill. It's to allow the opportunity, because I think the board wished to have it.

Mr. Kormos: I'll speak to time frames when we get there.

The Chair: Further discussion on the amendment? Shall the amendment carry? Carried.

Shall section 4, as amended, carry? Carried.

Section 5.

Mr. Balkissoon: I move that clause 5(2)(a) of the bill be struck out.

The Chair: Discussion?

Mr. Balkissoon: Currently the Consent and Capacity Board does make orders, and in the draft bill it was suggested that the CCB order the MOH. In reconsidering the draft bill, it was not necessary for the CCB to order the MOH, but the CCB can issue its own order. I believe one of the stakeholders who was here requested that, and the government has agreed.

Mr. Kormos: I listened carefully to the presenter the last time we were here, and I spoke with her afterwards and spoke with Mr. Balkissoon about it. I quite frankly want to commend him for having taken this issue back to the ministry, clearly in a somewhat zealous manner. It doesn't make sense to put the MOH back in the loop once it has gone beyond the medical officer of health to the point of appeal with the consent board. I support the amendment.

The Chair: Further discussion? Shall the amendment carry? Carried.

Further amendments?

Mr. Balkissoon: I move that subsection 5(4) of the bill be struck out and the following substituted:

"Notice of decision, order

"(4) The board shall, within the time provided in subsection (3), provide each party or the party's counsel or agent and the medical officer of health who referred the application to the board with a copy of the board's decision and of any order made by the board."

This is just a technical amendment, and I think it is as it reads.

The Chair: Mr. Kormos.

Mr. Kormos: I appreciate the technical amendment. Quite frankly, it's perhaps a little better language, in terms of grammar. Does it detract in any way from clause (b)? That's basically what you're altering, isn't it?

Mr. Balkissoon: Sorry, I can't hear you.

Mr. Kormos: You're altering clause (b).

Mr. Balkissoon: Right. I don't believe so.

Mr. Kormos: You're abbreviating it. Can we get some help by way of explanation? Are there folks here from the ministry who can speak to that?

The Chair: Would you please begin by introducing yourself for Hansard.

Ms. Natalie Osadchy: Natalie Osadchy. I'm counsel for the Ministry of Community Safety and Correctional Services. Mr. Kormos, as Mr. Balkissoon explained, it is simply a technical amendment. It collapses clause (5)(a) and clause (5)(b). It just places it in the one paragraph and makes the language consistent. It doesn't change what it's doing.

Mr. Kormos: Okay. Thanks.

The Chair: Further discussion? Shall the amendment carry? Carried.

Shall section 5, as amended, carry? Carried.

May I request unanimous consent to consider sections 6 and 7, there being no amendments proposed, as a block? Agreed.

Shall sections 6 and 7 carry? Carried.

Shall section 8 carry?

Mr. Kormos: One moment. Let's have some debate around section 8.

The Chair: Discussion and comments around section 8?

Mr. Kormos: Yes. I want to hear why the government wants to delete section 8 from the bill. I've got some things to say about this one.

Mr. Balkissoon: Section 8 was one section in the draft bill suggesting that the decisions of the CCB are final and cannot be used in any proceedings in the future. The stakeholders requested that they be given the opportunity to use the evidence from any blood sample taken in future proceedings, if necessary. The government has accepted that in striking out section 8—and we'll be voting against it—that allows that process to be dealt with in court and the court will make a decision as to what evidence is admissible or not.

Mr. Kormos: To the parliamentary assistant, you were doing so good so far. Look, the whole goal here is to have voluntary compliance, right? That's how you're going to get speedy production of blood samples. I appreciate that some of the parties are going to be people who are charged with criminal offences, because some of the parties who are entitled to seek a blood sample are victims of crimes. That's going to include police officers. Section 8, as you have it in here—and let's read it so everybody understands it: "The results of an analysis done pursuant to a request made by a medical officer of health under section 3"—that's where it's voluntary, huh?—"or an order of the board under section 5"—that's where it's ordered by the board after, effectively, an appeal of the MOH—"are not admissible in evidence in a criminal proceeding." That seems to me to make eminently good sense if you're encouraging voluntary compliance. It assures the criminal, however unfair it seems, that what we're doing here is a medical procedure.

You and I have had discussions. This leads me to the role of JPs, because you know I advocated the role of JPs. I don't want to be unfair—correct me if I am misstating anything—but the sense that the government had was that the JPs tend to be more criminal-offence-oriented, and the focus of this bill is to be health-oriented. By repealing section 8, you are effectively stating that those blood samples or the results of an analysis can be subpoenaed in a criminal prosecution. That's what it says. Section 8, as it exists, would prohibit the analysis from being subpoenaed in a criminal prosecution.

You say it's up to the courts. No, it's not up to the courts. Courts don't decide what you can or can't subpoena. The law decides that. You get a subpoena simply by appearing before a JP and the JP signs the subpoena. If you have reasonable and probable grounds to believe that Mario Sergio is in possession of an analysis of the blood of so-and-so and if that evidence is relevant, boom, a JP signs the subpoena and the police go get it. This is not helpful when it comes to voluntary compliance. And then you run the delay factor. That's not fair to the victim of the blood-splattering, if I can put it that way.

I'm sorry, and I've got to tell you that this is the first time I've seen this government recommendation, but you've made it very difficult for me to support the bill. Okay, I'm a lawyer talking now, but it is an offensive sort of thing. Would it be oh so nice? I agree, but Lord Jesus, the purpose here is to deal with public health matters, not with criminal matters, notwithstanding that there are going to be criminal matters.

Now, can the police subpoena, for instance, blood samples obtained during medical procedures if somebody is getting a blood test and so on? From time to time, yes, subpoenas are—well, when they're requested they're granted. There isn't immunity. This bill and the reason we're amending it is to encourage, to give effect to speedier results.

The Chair: Mr. Balkissoon? Oh, I'm sorry; Mr. Hardeman had a comment. I beg your pardon.

Mr. Ernie Hardeman (Oxford): I think, on the same topic, I agree with my colleague from the New Democrats, and I'm most taken by the fact that the parliamentary assistant says that the intent of voting against this section and having it removed is to let the courts decide. Not having been a party to all the hearings and so forth, maybe I'm not as well equipped to deal with this as the rest of the members of the committee, but as I read this section, the only reason it's there is to avoid what the parliamentary assistant says is the intent of voting against it: to let the courts decide. This section says the courts don't get to decide, that that is not relevant evidence. If you take it out, and if there is no legislation anywhere to protect it from being used in a court of law, it will always be applicable evidence if somebody asks for it.

If that's the government's intent—I suppose one could debate whether it should or shouldn't be—but to say that it means nothing, that we're taking it out so we'll let the courts decide as opposed to us deciding in the legislation, up until now the decision was made that it was this legislation that was going to decide whether that would be relevant in any criminal proceeding. By taking it out, it no longer will be. I have some concerns that we are changing the total intent of that protection that's there to make people receptive to volunteering the information in any activity, prior to it becoming a criminal activity. A lot of people would say, "Oh no, forget it. Don't take any tests from me because the next thing you know I'll be in court for something else totally apart from this."

The Chair: Mr. Balkissoon, and after that Mr. Kormos.

Mr. Balkissoon: There are some legal issues regarding section 8 also and I would like the ministry staff to just respond to the concerns of the other two members.

The Chair: Would the ministry staff then come forward?

Ms. Osadchy: If I might have a moment to confer with my colleague?

Mr. Kormos: Chair, why don't we have a recess?

The Chair: Let's have a five-minute recess.

The committee recessed from 1604 to 1612.

The Chair: Thank you for coming back promptly, within five minutes.

May I have unanimous consent to stand down consideration of section 8 for the moment? Okay.

Section 9: Mr. Balkissoon.

Mr. Balkissoon: I move that section 9 of the bill be amended by adding the following subsection:

"Protection from liability for complying with order to take or analyze sample, etc.

"(3.1) No action or other proceeding for damages or otherwise shall be instituted against a person for any act done in good faith in compliance with an order under clause 5(2)(c) or (d)."

The Chair: Discussion?

Shall the amendment carry? Carried.

Further amendments?

Mr. Balkissoon: I move that subsection 9(5) of the bill be amended by striking out "Nothing in this Act" at the beginning and substituting "Nothing in this Act and nothing done under this Act".

This is pretty well a technical amendment.

The Chair: Any comments?

Mr. Kormos: I don't think it's as technical as you say. This whole paragraph denies the creation of a physician-patient relationship. What that means is that you don't have the same duties or obligations between the person who is pulling the blood, for instance, and that's significant as well in terms of confidentiality. If you don't have a doctor-patient relationship, the person who is having the blood drawn from him or her can't call upon the drawer of blood with a syringe to maintain confidentiality.

So this is significant. I support it. I suggest that the bill doesn't want to do that. That's why my interest in section 8. Do you understand how this is very much tied to section 8? We're saying in the bill that there's no doctor-patient relationship, so the patient can't argue privilege. The patient can't say, "You're my doctor. You're barred from testifying for a civil plaintiff," or somebody else, "because I have a doctor-patient relationship with you." We're telling the person from whom blood is being drawn that that's not going to exist. That's why I say section 8 and its existence becomes more critical.

The Chair: Shall the amendment carry? Carried.

Shall section 9, as amended, carry? Carried.

Shall section 10 carry? Carried.

Section 11: Mr. Balkissoon.

Mr. Balkissoon: I move that subsection 11(1) of the bill be amended by adding the following clause:

"(m) prescribing the maximum time period within which a respondent must comply with an order made under section 5 and that may be specified by the board in such an order."

The Chair: Discussion?

Shall the amendment carry? Carried.

Mr. Balkissoon: Mr. Chair, could we just take a small recess again to allow the staff to come back?

The Chair: Before we do that, shall section 11, as amended, carry? Carried.

Mr. Kormos: If you wish, Mr. Chair, we can go all the way on to 17.

The Chair: Mr. Balkissoon, do you have any objection to block consideration of sections 12 through 17?

Mr. Balkissoon: Not at all.

The Chair: There being no amendments proposed to sections 12 through 17, shall sections 12 through 17 carry? Carried.

May we have a brief recess?

Mr. Kormos: Yes, we may.

The Chair: Then we shall.

The committee recessed from 1617 to 1625.

The Chair: Okay. We are once again in session.

We are going to consider section 8 of the bill, all other sections having received consideration.

Shall section 8 carry? Carried.

Shall the title of the bill carry?

Interjections.

The Chair: Shall we debate the title of the bill until midnight?

Shall Bill 28, as amended, carry? Carried.

Shall I report the bill—

Mr. Kormos: Debate?

The Chair: On whether I shall report the bill or whether it shall carry?

Mr. Kormos: On whether you'll report the bill.

The Chair: Okay. Shall I report the bill, as amended, to the House? Mr. Kormos.

Mr. Kormos: Thank you kindly.

Clearly, when we addressed this matter, first round, with the Garfield Dunlop bill and everybody made their best effort, it wasn't quite right in terms of achieving the goals we wanted to achieve. I was pleased to get—and I thank very much Lorraine Luski and Margaret Drent, among others, who have been helpful in providing material to us. I'm interested in the data that were provided the last time the committee met. I'm looking forward to seeing what new data there are as a result of these amendments in an effort to accelerate it, and indicate that it's one of those things we have to be prepared to revisit if it's not as effective as it should be.

For instance, should particular sections be found to be outside the power of the province and effectively struck from the bill, at least in terms of any impact, it seems to me that we have to sit down and address that. But I think the bill fairly illustrates our intent—and it was a tripartite process; all three parties agreed—to ensure that the identified people—front-line emergency workers, good Samaritans and others who run the risk of being infected—have access to blood testing analysis of the person who bled on them in the shortest possible order so that they can take measures to protect their own health and, as has been pointed out by so many, simply for the emotional security or satisfaction that the person whose blood might have infected you is not, in and of himself, disease-carrying.

It's amazing, because, while there was some apprehension—and everybody in the room will recall that about the bill in the first instance—by certain communities and people in those communities, there has been no suggestion during the currency of the existing legislation that the legislation has been abused. If anything, it indicates that most of the compliance is voluntary by people who are bleeding, and similarly, the data illustrate that there has been a very conservative utilization of the bill by people who have been bled on. When we look at numbers of 70 or 71 over a year and a half or more, we all know there are a whole lot of paramedics, correctional officers, police officers and firefighters who have been bled on than merely that number. So clearly, those front-line emergency personnel, and good Samaritans, have used common sense and restraint in utilizing the bill.

I'm pleased to have participated, and I look forward, should the need arise, to addressing the bill again. The government doesn't have to feel any shame in that whatsoever.

The Chair: Further discussion?

Mr. Tim Peterson (Mississauga South): Mr. Chair, I think it's just as well that we should make him a government member for the rest of the proceedings.

Mr. Kormos: Whoa, that's out of order.

The Chair: Mr. Peterson, unfortunately that is indeed out of order.

Shall I report the bill, as amended, to the House? Agreed.

Thank you very much, everybody. We're adjourned.

The committee adjourned at 1630.

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