



Legislative Assembly  
of Ontario

First Session, 39<sup>th</sup> Parliament

Assemblée législative  
de l'Ontario

Première session, 39<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Thursday 9 April 2009**

**Journal  
des débats  
(Hansard)**

**Jeudi 9 avril 2009**

**Standing Committee on  
Justice Policy**

Coroners Amendment Act, 2009

**Comité permanent  
de la justice**

Loi de 2009 modifiant  
la Loi sur les coroners

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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  
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Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
JUSTICE POLICY**

**COMITÉ PERMANENT  
DE LA JUSTICE**

Thursday 9 April 2009

Jeudi 9 avril 2009

*The committee met at 1403 in committee room 1.*

CORONERS AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT  
LA LOI SUR LES CORONERS

Consideration of Bill 115, An Act to amend the Coroners Act / Projet de loi 115, Loi modifiant la Loi sur les coroners.

**The Chair (Mr. Lorenzo Berardinetti):** Good afternoon and welcome to the justice policy committee. We will be amending the Coroners Act. Are there any comments, questions or amendments to any section of the bill, and if so, to which section?

**Mr. Garfield Dunlop:** I've got a number of amendments here.

**The Chair (Mr. Lorenzo Berardinetti):** Yes. You can start with your first one.

**Mr. Garfield Dunlop:** This is one that—we listened to Terence Young and his group.

I move that section 1 of the bill be amended by adding the following subsection to section 1 of the Coroners Act: "Interpretation of means of death

"(3) A reference in this act to the means by which a deceased came to his or her death refers to one of the following causes of death:

"1. Natural causes.

"2. Accident, which includes iatrogenic death.

"3. Suicide.

"4. Homicide.

"5. Undetermined."

Our comment on this is, the motion legislates the means of death and amends existing policy so that iatrogenic death—it's defined in a memo to committee as "An unintended injury or harm to patient resulting from health care management rather than a disease process"—is classified as accidental as opposed to a natural means of death.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Are there any comments?

**Mr. Peter Kormos:** New Democrats support this because it imports the inclusion of iatrogenic death, which of course was the subject matter of a number of very competent submissions.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any other comments?

**Mr. Dave Levac:** For information purposes, the government will not be supporting this because the means of death that is being proposed is currently captured under either the natural death or accidental death categories. These definitions are already captured through the "by what means" category. Therefore, we believe it's already covered off in the act.

**The Chair (Mr. Lorenzo Berardinetti):** All right. Then we'll take a vote. Any further debate? All those in favour? Opposed? That amendment does not carry.

We'll go to the next amendment—

*Interjection.*

**The Chair (Mr. Lorenzo Berardinetti):** I'm sorry. Shall section 1 of the bill carry? Those opposed? Carried.

Section 2? Carried.

Section 3? Mr. Levac?

**Mr. Dave Levac:** I move that subsection 7.1(1) of the Coroners Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Pathologists register

"(1) The chief forensic pathologist shall maintain a register of pathologists who are authorized by the chief forensic pathologist to provide services under this act."

The provision will ensure that the pathologists on the register of pathologists are those who are authorized by the chief forensic pathologist. Currently, subsection 7.1(1) authorizes the chief forensic pathologist to maintain a register of pathologists who are available to provide services under the Coroners Act. With the existing wording, a pathologist may argue that he or she is available, even if the chief forensic pathologist has concerns about his or her qualifications.

The chief forensic pathologist must be authorized to determine whether a pathologist is qualified to provide these services. Other pathologists authorized by the chief forensic pathologist should be on the register.

This cleans up a piece of the act for which we need to change the wording.

**The Chair (Mr. Lorenzo Berardinetti):** Any further debate? None? We'll put it to a vote. All those in favour? Opposed? Carried.

Shall section 2, as amended, carry?

*Interjection.*

**The Chair (Mr. Lorenzo Berardinetti):** I'm sorry. Section 3, as amended: All those in favour? Opposed? Carried.

We'll move on to section 4.

**Mr. Dave Levac:** I move that subsection 8(7) of the Coroners Act, as set out in section 4 of the bill, be struck out and the following substituted:

“Annual report

“(7) At the end of each calendar year, the oversight council shall submit an annual report on its activities, including its activities under subsection 8.1(1), to the minister, who shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the assembly.”

The provision requires the minister to provide an annual report of the death investigation oversight council to the Lieutenant Governor in Council and then table it to the Legislative Assembly. This will ensure greater transparency and public accountability—we listened to what was asked of us—which would simultaneously foster improved public confidence in the death investigation system. Respondents through the Registered Nurses’ Association of Ontario recommended that Bill 115 be amended to require annual reports of the death investigation oversight council and others to be tabled to the Legislature and made public, and ensure reports to the complaints committee and the oversight council be tabled in the Legislature and made public. We believe that’s the right thing to do.

1410

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further debate?

**Mr. Peter Kormos:** I’ll tell you what, Chair. Many of these amendments are just obvious in terms of what they’re responding to. If Mr. Levac wants, I propose that we move the government amendments. If there’s something curious about it—

**Mr. Dave Levac:** Done.

**Mr. Peter Kormos:**—one of us will ask. If he feels compelled to read the script, I’m not going to interfere with his compulsive behaviour. He’s a fair-minded person.

**Mr. Dave Levac:** In response, I’ll agree.

**The Chair (Mr. Lorenzo Berardinetti):** Okay.

**Mr. Shafiq Qadri:** We still have to read it into the record.

**Mr. Dave Levac:** The amendments, yes, but he’s talking about the rationale.

**Mr. Shafiq Qadri:** Oh, the rationale.

**Mr. Peter Kormos:** I’m talking about the script from the ministry.

**Mr. Dave Levac:** I did ad lib, Peter. Come on.

**Mr. Peter Kormos:** Don’t admit to that.

**Mr. Dave Levac:** I did. They’ll tell you.

**Mr. Peter Kormos:** You’ll scare the hell out of the ministry staff.

**Mr. Dave Levac:** No, no; they’re smiling.

**Mr. Peter Kormos:** Yes. They have tenure. They’re not going anywhere.

**Mr. Dave Levac:** They trust me. Go ahead, Chair.

**Mr. Peter Kormos:** Don’t forget, the deputy minister reports to the Premier, not to the minister.

**The Chair (Mr. Lorenzo Berardinetti):** Shall subsection 8(7) of the Coroners Act—this is the amendment on page 3—carry? All those in favour? Opposed? Carried.

We’ll move on, then, to the next proposed amendment, which is Mr. Dunlop’s, page 5.

**Mr. Garfield Dunlop:** We were going a little bit further on this.

I move that section 8 of the Coroners Act, as set out in section 4 of the bill, be amended by adding the following subsection:

“Availability to public

“(8.1) The oversight council shall make reports that are submitted under subsection (7) and (8) available to the public in both printed and electronic formats.”

The motion advances the main conclusion of the Goudge inquiry: the need to increase transparency and accountability. In the current technological age, information should be available to the public in both print and electronic formats, including on an organization’s website. Enhancing information available to the people increases their opportunities for active citizenship.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further debate?

**Mr. Dave Levac:** The government will not be supporting the amendment. It’s not done anywhere else, and it may be going through personal and confidential information that may be subject to some very difficult situations.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further debate? None? We’ll vote on the motion. All those in favour? Opposed? It does not carry.

**Mr. Dave Levac:** Keep it moving, Garfield.

**Mr. Garfield Dunlop:** I move that subsection 8.1(1) of the Coroners Act, as set out in section 4 of the bill, be amended by adding the following paragraph:

“5.1 The exercise of the power to refuse to review complaints under subsection 8.4(9).”

This motion will enhance accountability of the chief coroner and the chief forensic pathologist under subsection 8.4(9) and also increase the public’s faith in the system as a whole. We took this from Mr. Farlow’s presentation and the Psychiatric Patient Advocate Office of Ontario.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further debate?

**Mr. Dave Levac:** Yes. We will support this with an understanding that with a friendly amendment of changing 5.1 to 4.1—the staff believe that this captures an even larger sense of the intent of the motion. So if we change 5.1 to 4.1, the government will accept. A friendly amendment.

**Mr. Garfield Dunlop:** Yes. I agree with that.

**Mr. Dave Levac:** You have to read it.

**The Chair (Mr. Lorenzo Berardinetti):** All those in favour of the friendly amendment? Opposed? Carried.

All those in favour of the motion, as amended? Carried.

We’ll move on to the next motion.

**Mr. Dave Levac:** I move that the motion relating to subsection 8.1(1) of the Coroners Act be amended—

**The Chair (Mr. Lorenzo Berardinetti):** One moment, Mr. Levac. I think the next one is on page 7 here.

**Mr. Garfield Dunlop:** I think it's mine.

**The Chair (Mr. Lorenzo Berardinetti):** We're on page 7. So this is Mr. Dunlop's motion.

**Mr. Garfield Dunlop:** I move that subsection 8.2(1) of the Coroners Act, as set out in section 4 of the bill, be struck out and the following substituted:

“Complaints committee

“8.2(1) There shall be a complaints committee of the oversight council composed, in accordance with the regulations, of,

“(a) members of the oversight council, appointed by the chair of the oversight council; and

“(b) at least two members of the public who are not members of the oversight council, appointed by the chair of the oversight council.”

This is a motion recommended in Mr. Farlow's presentation. The motion amends the bill to ensure that members of the public are included in the oversight council. My previous PC motion to this amendment works with the main premise of the Goudge recommendations to increase the public's faith in the system. In this case, it will do so by including non-members of the oversight council, thereby decreasing the likelihood that complaints will be made of internal cover-ups.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you, Mr. Levac.

**Mr. Dave Levac:** While we accept the intent of the interpretation of the Goudge report, he didn't quite say that it needed to be in the legislation. As a matter of fact, I quote: “The membership of the governing council should be set by regulation.” That's on page 337 of his report. We intend to do so in regulation, and we feel that when the draft of the regulation is done, we will be dealing with this issue as a regulatory stream instead of a legislative one. So we won't be supporting this because we don't know as of yet the assignment of two members versus what we come out with with the regulatory stream.

**The Chair (Mr. Lorenzo Berardinetti):** Any further debate? None? All those in favour of the motion? Opposed? That does not carry.

We'll go on.

**Mr. Garfield Dunlop:** I move—

**The Chair (Mr. Lorenzo Berardinetti):** Apparently this one now becomes invalid because it's redundant.

*Interjection.*

**The Chair (Mr. Lorenzo Berardinetti):** It's just invalid.

**Mr. Garfield Dunlop:** Page 8 withdrawn.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. I don't need a motion for that, do I? No? Okay, so we'll go on to page 9, then, Mr. Levac.

**Mr. Dave Levac:** I move that subsection 8.3(2) of the Coroners Act, as set out in section 4 of the bill, be amended by striking out “for the purposes of the admin-

istration of this act” at the end and substituting “for the purposes of the administration of this act or the Regulated Health Professions Act, 1991 or as otherwise required by law.”

This amendment—I'll wait for comment.

**Mr. Peter Kormos:** I think it's a reasonable amendment. I intend to support it.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any other debate? None? All those in favour, then? Opposed? That carries.

The next one is on page 10, Mr. Dunlop.

**Mr. Garfield Dunlop:** I move that paragraph 1 of subsection 8.4(3) of the Coroners Act, as set out in section 4 of the bill, be amended by striking out “or not to hold an inquest” at the end.

This motion will amend the bill by providing a point of appeal for individuals. There is no similar provision in the act.

**The Chair (Mr. Lorenzo Berardinetti):** Any debate? Mr. Levac.

**Mr. Dave Levac:** Yes, we won't be supporting it because there's already a process in place whereby complaints of those appealing the coroner's decision not to hold an inquest can appeal via the judicial review.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Kormos.

**Mr. Peter Kormos:** That's one of the problems with the whole approach that's been taken in support—for instance, the repeal of section 22—and it's the undercurrent in the government's rationale for not supporting this. The reality is that most decisions around inquests are not medical decisions; they're justice decisions. The minister, for instance, stands up and says, “I'm not a doctor. Who am I to overrule the coroner?” Well, the fact is that the coroner's office is a highly politicized body. When we heard people make comments about their experience with various coroners and the chief coroner, we heard some of the incredibly tragic stories of people who were looking for justice. See, they knew their daughter had died. That's the reality; it's a fact of life. It isn't about knowing whether or not she's dead; of course she's dead. So it's very peculiar, because the government's rejection of this amendment is consistent with their efforts—I assume they'll be successful—to repeal section 22. The Coroners Act is as much, if not more, about justice than it is about health and health care, and I find it regrettable that that isn't perceived. At least, it isn't articulated by government members, least of all the minister.

1420

**The Chair (Mr. Lorenzo Berardinetti):** Further debate? Mr. Levac.

**Mr. Dave Levac:** Not to belabour the point, but as a reminder, I don't necessarily agree with the characterization that it's in that vein that we are against any kind of amendment. I would also remind Mr. Kormos—who doesn't need the reminder; I just want to be on record as saying that inquests are not performed to find guilt. Inquests are done to find ways in which to improve, change, modify and prevent. So I think it's a little bit of a different step or a different logic when we present our-

selves in an inquest. I don't agree with the characterization, but I understand the point he is making because of the very deputations we've heard. I'm respectful of those.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Kormos.

**Mr. Peter Kormos:** Mr. Levac has engaged; let me expand. Take a look at the existing section 25 of the Coroners Act. That's the section that the coroner down in Hamilton is relying upon to hold the joint inquests around Jared: an inquest into the death of the boy and an inquest into the death of the father. Once again, we know how the boy died and we know how the father died. There's no secret about that; it was notorious. Everybody knows.

But the interesting thing is, you see here—and this is the problem with eliminating or rejecting the appeal process that Mr. Dunlop is proposing in his amendment and with the repeal of section 22. Take a look at 25(2): “Where two or more deaths appear to have occurred in the same event or from a common cause”—same event—“the chief coroner may direct that one inquest be held into all of the deaths.”

You see, one of the arguments for the repeal of section 22 is, “Oh, you can go to Divisional Court,” right? But in Divisional Court, the court's only allowed to determine whether or not the coroner's acting within the scope of the law. I've acknowledged in the Legislature—so has Ms. Horwath—that the coroner's decision to hold a joint inquest is legal. It's not illegal. The coroner has that discretion to do it. He “may.” It's a discretion, and no Divisional Court is going to overrule that. You can't tell Jared's mom or his grandmom to go to Divisional Court, because the court's going to have to find that, no, what the coroner's doing is within the scope of the law.

But again, is justice being served? I'm not talking about guilt or not guilt, I'm talking about justice—justice for the memory of Jared, justice for other kids who are caught in the same, dare I say it, crossfire in divorce and matrimonial situations. That's, once again, regrettable. When I say justice, I'm not talking about findings of guilt. I'm well aware of the law in that regard. I'm talking about what's just and fair. I would argue that what's happening in Hamilton with Jared is neither just nor fair, but it's perfectly legal, and that's why we need the appeals stage that Mr. Dunlop's moving and it's why we need to retain section 22. So let's move on.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you very much. We have a PC motion that Mr. Dunlop has moved on page 10. So let's vote—

**Mr. Garfield Dunlop:** We're voting on page 10?

**The Chair (Mr. Lorenzo Berardinetti):** Yes.

**Mr. Peter Kormos:** Recorded vote.

#### Ayes

Dunlop, Kormos.

#### Nays

Levac, Moridi, Qaadri, Rinaldi.

**The Chair (Mr. Lorenzo Berardinetti):** So that does not carry.

We'll move on to the next.

**Mr. Garfield Dunlop:** I move that section 8.4 of the Coroners Act, as set out in section 4 of the bill, be amended by adding the following subsection:

“Notice of referral

“(8.1) If the complaints committee refers a complaint to the College of Physicians and Surgeons of Ontario or any other person or organization under subsection (8), the committee shall promptly give notice in writing to the complainant, the coroner or pathologist who is the subject of the complaint, and the oversight council.”

This motion will increase accountability and transparency, consistent with the Goudge recommendations, by ensuring that all relevant parties—the complainant, the coroner and the pathologist who is the subject of the complaint and the oversight council—are formally advised in writing that a complaint will be reviewed by another body.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further debate on this? Mr. Levac.

**Mr. Dave Levac:** The government agrees with the logic, understands the motion and will support it.

**The Chair (Mr. Lorenzo Berardinetti):** The one point I wanted to make, if I may interject here, is that we have 8.1—“If the complaints committee refers a complaint to the College of Physicians and Surgeons of Ontario or another person”—and it should be “any other person,” I think.

When you spoke, you said, “any other,” just for the record. You meant to say “another,” right?

**Mr. Garfield Dunlop:** “Another”: Did I say that?

**The Chair (Mr. Lorenzo Berardinetti):** You said “any other.”

**Mr. Garfield Dunlop:** Okay, “another”; I'm sorry.

**Mr. Dave Levac:** Record corrected.

**Mr. Shafiq Qaadri:** Hansard takes care of those things.

**The Chair (Mr. Lorenzo Berardinetti):** Sometimes. Okay. So we're clear on that. We'll vote on this.

Is there any other debate or discussion? None? All those in favour? All those opposed? The motion carries.

We'll move on to page 12.

**Mr. Garfield Dunlop:** I move that section 8.4 of the Coroners Act, as set out in section 4 of the bill, be amended by adding the following subsection:

“Availability to public

“(15.1) The oversight council shall make reports that are submitted under subsection (15) available to the public in both printed and electronic formats.”

This motion advances the main conclusion of the Goudge inquiry: the need to increase transparency and accountability. In the current technological age, information should be available to the public in both print and electronic formats. Enhancing information available to the people increases their opportunities for active citizenship.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any comments or debate? Mr. Levac.

**Mr. Dave Levac:** The government won't be supporting the amendment. It's not in keeping with the practice of the College of Physicians and Surgeons of Ontario. The only other concern is that the reports could start to come in as vexatious, frivolous, unfounded complaints all get reported. I think it's not helpful, so we won't be supporting it.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Mr. Kormos?

**Mr. Peter Kormos:** That's interesting. The annual report of the review of complaints against judges contains all sorts of frivolous and vexatious complaints and identifies them as such.

**The Chair (Mr. Lorenzo Berardinetti):** And lawyers too, I think.

**Mr. Peter Kormos:** There are no frivolous or vexatious complaints about lawyers.

**The Chair (Mr. Lorenzo Berardinetti):** Not me. *Interjection.*

**Mr. Dave Levac:** We're not in favour.

**The Chair (Mr. Lorenzo Berardinetti):** Any other debate? None? All those in favour of the motion? All those opposed? The motion does not carry.

We'll now move to page 13. Mr. Kormos.

**Mr. Peter Kormos:** I move that section 8.4 of the Coroners Act, as set out in section 4 of the bill, be amended by adding the following subsection:

"Tabling

"(15.1) The oversight council shall submit the annual report to the minister and the minister shall table the annual report in the Legislative Assembly."

I like reports that are tabled in the Legislative Assembly. It provides a transparency and an accessibility that wouldn't exist otherwise.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Mr. Levac?

**Mr. Dave Levac:** While I understand what Peter is talking about and the circumstances under which this particular amendment finds itself in the same vein as the previous one, we won't be supporting it, although I do want to remind those people who are listening that the oversight council was amended by the government—and it was accepted by the other people—that we will be submitting the annual report to the Legislature. So we're not removing ourselves from transparency. We're adding to it by the original amendment, so this one won't be supported.

**The Chair (Mr. Lorenzo Berardinetti):** Any other debate? None? All those in favour of the motion? All those opposed? That does not carry.

That ends section 4, then. So I'll ask the question—

**Mr. Peter Kormos:** Chair, I'm quite prepared to deal with sections 4 and 5 together.

**The Chair (Mr. Lorenzo Berardinetti):** I'm required to read both of them separately.

Shall section 4, as amended, carry? All those in favour? All those opposed? Carried.

Shall section 5 carry? All those in favour? All those opposed? Carried.

We'll move on then to section 6, page 14. Mr. Dunlop. **1430**

**Mr. Garfield Dunlop:** I move that subsection 6(1) of the bill be struck out.

This motion will continue to make it an individual's duty to report a death when it has occurred by unfair means. We agree with the Ontario Bar Association, who recognized in their submission that a death in such circumstances may be captured by the broad clauses such as 10(1)(d), (f) or (g). However, it is also possible that it may not. If the purpose behind a coroner's investigation is to investigate suspicious circumstances, "unfair means" seems to speak directly to that purpose. A description of circumstances as unfair may be more appropriate in some situations.

**The Chair (Mr. Lorenzo Berardinetti):** Any discussion or debate? Mr. Levac.

**Mr. Dave Levac:** The government is of the mind here that it can or can't. The one point I would like to make is that this is an extremely—I defer to the lawyers in the room who have knowledge of "unfair means." My understanding is that it's relatively obsolete and very rarely, if ever, used and that this is the only type of death being repealed. So the duty to report still remains on all of the other types of deaths, including results of violence, misadventure, negligence, misconduct, malpractice, during pregnancy, following pregnancy; all of those are still reportable. "Unfair means" are captured by deaths that fall under the same categories such as negligence, misconduct and malpractice. Why we wanted to do this: It was almost like a cleaning-up situation with something that's obsolete and hardly understood when we say "unfair means."

**Mr. Peter Kormos:** Chair, perhaps we could—

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Kormos.

**Mr. Peter Kormos:** My sense of "unfair means" is far more exotic—

**Mr. Dave Levac:** Okay, I'm open to that.

**Mr. Peter Kormos:** Perhaps a duel where the guy turned around before they'd walked the 10 steps. I'm dead serious. Think about it: unfair means, right? I just said it was more exotic and far more interesting and exciting. Can we get somebody to come here and tell us—because it is an interesting phrase—what it means or has meant?

**Mr. Dave Levac:** Can you please just come in and identify yourself and then just explain? That's fine.

**The Chair (Mr. Lorenzo Berardinetti):** I've become a ventriloquist. I can do it without moving my lips. Go ahead.

**Mr. Jay Lipman:** Jay Lipman, counsel of the Ministry of Community Safety.

We did look at "unfair means," and it's never been judicially considered in reforms to the Coroners Act. It seems to have been used, rarely, in the context of fraud. So with insurance fraud, they'll use the term "unfair means" in that particular legal context.

**Mr. Peter Kormos:** What would an example be, though?

**Mr. Jay Lipman:** I don't think we have one.

**Mr. Peter Kormos:** So the duel is a pretty good one.

**Mr. Dave Levac:** It's pretty exotic.

**Mr. Jay Lipman:** We do know that it's been in the act for a long time. I don't remember the date exactly, but we did look at it and it's been in there since early days. So a duel? Possibly.

**Mr. Peter Kormos:** I'm inclined to want to keep it just for its trivia value. It doesn't hurt.

**Mr. Dave Levac:** I'm okay.

**Mr. Peter Kormos:** I'm going to support it.

**Mr. Dave Levac:** The pleasure of the opposition is where I've always tried to land.

**The Chair (Mr. Lorenzo Berardinetti):** Okay. So no further discussion on this?

**Mr. Dave Levac:** We're okay with it.

**The Chair (Mr. Lorenzo Berardinetti):** This is on page 14, then. We were talking about the motion on page 14 moved by Mr. Dunlop. All those in favour? Opposed? Carried.

**Mr. Dave Levac:** How do you like that, Peter? Your power of persuasion has struck again.

**Mr. Peter Kormos:** Ten years from now, when many of us will no longer be alive—

**Mr. Dave Levac:** Somebody's going to say, "Why is that still there?" But it will go on record if the Liberals want to use some red tape and remove it.

**Mr. Peter Kormos:** Close the door when you leave.

**Mr. Dave Levac:** I was intrigued by your duel.

**The Chair (Mr. Lorenzo Berardinetti):** Duels are illegal.

Page 15.

**Mr. Garfield Dunlop:** I move that,

(a) subsection 10(4.3) of the Coroners Act, as set out in subsection 6(5) of the bill, be amended by striking out "if as a result of the investigation he or she is of the opinion that the person may not have died of natural causes" at the end;

(b) subsection 10(4.4) of the Coroners Act, as set out in subsection 6(5) of the bill, be struck out; and

(c) subsection 10(4.5) of the Coroners Act, as set out in subsection 6(5) of the bill, be amended by striking out "if as a result of the investigation he or she is of the opinion that the person may not have died of natural causes" at the end.

Our comment on that is that the motion will make an inquest mandatory when a person dies while committed to and on the premises of a correctional institution, or when a person is off the premises of a correctional institution but in the actual custody of a person employed at the institution, even if they die of natural causes. Doing so will ensure that faith in our correctional institutions is upheld.

**The Chair (Mr. Lorenzo Berardinetti):** Any discussion? We'll start with Mr. Kormos.

**Mr. Peter Kormos:** The existing provision, subsection 10(4) of the Coroners Act, is one that, as I under-

stand it, requires a mandatory inquest when somebody is in a correctional institution. The amendment in 10(4) specifically deletes the words "correctional institution," which is a provincial reformatory, amongst other things, and then has the qualified version of it in 10(4.3).

I recall the minister, at one point, arguing that we shouldn't have mandatory inquests because people could die just of old age in a correctional institution. I think that's rather unrealistic, because there aren't too many old people in correctional institutions. Garth Drabinsky will probably be one of the oldest people in the jail that he's going to.

*Interjection.*

**Mr. Peter Kormos:** From time to time, there are 70- or 80-year-olds.

When the state assumes responsibility by taking custody of a person, whether it's in a psychiatric hospital or whether it's in a jail, whether the person is there for treatment of their health or whether they're there because they're being punished—it seems to me that if the state is going to accept that role, then the person should expect to leave the institution when their time is up.

To be fair, the government has maintained mandatory coroners' inquests in a number of other parallel situations, with young offenders and so on.

I think it's a regrettable change in the law, and it won't serve us well. People shouldn't be dying in the custody of the state. If they do die, we should understand how and why they died, regardless of how old they are.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Levac.

**Mr. Dave Levac:** Let me start by agreeing with my colleague and indicating to him that I agree that no one should die in care, and when they do die in care, there should be something happening, which is why we'll not be supporting this—because that is going to happen.

There will be natural deaths of adults in custody, and we'll no longer require a mandatory inquest. But to be sure, and to repeat what has been said here in committee several times, the coroner will still have the ability, at his or her discretion, to call an inquest. That is not off the table.

What also is on the table, to reinforce this, is that there will still be mandatory investigations. At that point, there will still be an opportunity for the coroner, in his or her decisions, once they've investigated the death, to make the decision as to whether or not to move forward with an inquest. Under those circumstances, I believe it's the best use of their time. Don't forget, if they're not doing a mandatory inquest on every single death—the ones that are there when he decides in his investigation—the focus will be on the inquest that is absolutely necessary to ensure that things change as a result of the investigation and the inquest.

So I think we're getting the best of both worlds, under these circumstances, in the use of our authority.

**The Chair (Mr. Lorenzo Berardinetti):** Any further discussion on the motion on page 15?

**Mr. Peter Kormos:** Recorded vote.

**Ayes**

Dunlop, Kormos.

**Nays**

Leal, Levac, Moridi, Qaadri, Rinaldi.

**The Chair (Mr. Lorenzo Berardinetti):** That does not carry.

1440

**Mr. Peter Kormos:** Chair, I suspect that moving the motion on page 16 would be futile. Let's move on to page 17.

**The Chair (Mr. Lorenzo Berardinetti):** So you're withdrawing? The one on page 16 is withdrawn by Mr. Kormos. We'll move on to page 17.

**Mr. Peter Kormos:** I didn't withdraw it. I'm just not moving it.

**The Chair (Mr. Lorenzo Berardinetti):** You're just not moving it. Okay, fine.

Mr. Levac?

**Mr. Dave Levac:** I move that subsection 6(5) of the bill be amended by adding the following subsections to section 10 of the Coroners Act:

"Death while restrained on premises of psychiatric facility, etc.

"(4.7) Where a person dies while being restrained and while detained in and on the premises of a psychiatric facility within the meaning of the Mental Health Act or a hospital within the meaning of part XX.1 (Mental Disorder) of the Criminal Code (Canada), the officer in charge of the psychiatric facility or the person in charge of the hospital, as the case may be, shall immediately give notice of the death to a coroner and the coroner shall hold an inquest upon the body.

"Death while restrained in secure treatment program

"(4.8) Where a person dies while being restrained and while committed or admitted to a secure treatment program within the meaning of part VI of the Child and Family Services Act, the person in charge of the program shall immediately give notice of the death to a coroner and the coroner shall hold an inquest upon the body."

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further discussion?

**Mr. Peter Kormos:** We agree.

**The Chair (Mr. Lorenzo Berardinetti):** Okay. No more discussion? Let's vote, then.

All those in favour? All those opposed? Carried.

Page 18, Mr. Kormos.

**Mr. Peter Kormos:** I move that section 6 of the bill be amended by adding the following subsection:

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

"Notice of death of worker while travelling

"(5.1) Where a worker dies while travelling, whether or not in a vehicle, for work-related purposes during working hours, the worker's employer shall immediately

give notice of the death to a coroner and the coroner shall hold an inquest upon the body."

I think that's reasonably self-explanatory. We're talking about a whole lineup of people in various state-related contexts—correctional facilities, psychiatric facilities and so on. Obviously, we're interested in people who are captivated by their working environment; that is, while they're performing a working duty. We think that this would be a healthy amendment that would address worker safety.

One of the examples and one of the issues that gives rise to it is, of course, the plight of migrant workers and the plight of workers like chicken catchers, who are trucked out to various work sites, notoriously in shabby vans with no seat belts, with holes in the floor, with carbon monoxide and other fumes seeping up into the vehicle. That's our motivation for this particular amendment.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any discussion? Mr. Levac.

**Mr. Dave Levac:** Again, while I appreciate the passion behind the request, the government will not be supporting it, but wants to point out a couple of things. Number one, a coroner can do an inquest in any death, and if there is a reason for the accident happening, anywhere, the coroner does have the capacity to hold an inquest. We are also talking about a very difficult circumstance, where the coroner's office may not have the capacity to do the types of inquests that are being requested in a mandatory way, with sheer volume, if we take a look at this and whether or not we have that capacity at this time. We want to make sure that we focus those resources as absolutely, as poignantly, as possible.

But I want to come back to the sensitivity to the points that the member is making, and that is, it's understood clearly that anyone who dies transporting themselves to and from work is a tragedy. Therefore, we want to reinforce the fact that the coroner does have the capacity to call an inquest under those circumstances—but under any circumstances, and to investigate, let alone do an inquest. So we're not going to be in favour of this particular amendment, but we are sensitive and appreciate what has been shared with the committee.

**The Chair (Mr. Lorenzo Berardinetti):** Any further discussion?

**Mr. Peter Kormos:** Recorded vote.

**Ayes**

Dunlop, Kormos.

**Nays**

Leal, Levac, Moridi, Qaadri, Rinaldi.

**The Chair (Mr. Lorenzo Berardinetti):** That does not carry.

We'll move on to page 19.

**Mr. Garfield Dunlop:** I move that section 6 of the bill be amended by adding the following subsection:

“(6.1) Section 10 of the act is amended by adding the following subsection:

“Notice to Provincial Advocate for Children and Youth

“(7) A coroner who receives notice under this section of the death of a child or youth, as those terms are defined in the Provincial Advocate for Children and Youth Act, 2007, shall promptly notify the Provincial Advocate for Children and Youth in writing of the death.”

Our comments are that this motion will support the provincial advocate in his or her function of advocating for children in Ontario as well as strengthening accountability under this act.

**The Chair (Mr. Lorenzo Berardinetti):** Any further discussion or debate? Mr. Levac.

**Mr. Dave Levac:** To be clear, the issue of access of information is definitely being discussed and currently being discussed by the coroner’s office and the Provincial Advocate for Children and Youth in an attempt to establish an internal protocol which was committed to during these hearings and acknowledged by the advocate. The issue may also be addressed legislatively at a later date with the “good government” bill, which allows us to continue to add to those circumstances once those negotiations are finished. It’s important to note that the provincial advocate for youth does not have legislative authority within the legislation to receive information from the coroner’s office, which is part of that discussion. This information is considered personal and private, and as such, privacy concerns must be considered. The advocate has identified that as a reasonable request, but the discussions will continue and we’ll probably see something of that dealt with in the “good government” bill.

So we will not be supporting it at this time but are sensitive to what the concerns are.

**The Chair (Mr. Lorenzo Berardinetti):** Any further discussion? None? So we’ll take a vote, then. All those in favour of the motion? Opposed? It does not carry.

That ends section 6. I’ll ask the question: Shall section 6, as amended, carry? Carried.

We move on to section 7. First motion, Mr. Dunlop.

**Mr. Garfield Dunlop:** I move that subsection 15(1) of the Coroners Act, as set out in subsection 7(1) of the bill, be amended by striking out “such investigation as, in the opinion of the coroner, is necessary in the public interest to enable the coroner” in the portion before clause (a) and substituting “such investigation as will enable the coroner”.

Our comments are that this motion removes the subjective words “in the public interest” to ensure that the coroner’s investigation always provides the coroner with the necessary information to answer (a) to (c) of this subsection. The motion is in line with the existing act.

**The Chair (Mr. Lorenzo Berardinetti):** Any discussion or debate? Mr. Levac.

**Mr. Dave Levac:** We won’t be supporting it because of the very logic that’s being presented before us that it undershadows the public interest and quite possibly could elevate the private interest. Therefore we have to remind ourselves again that this isn’t to find fault or provide ammunition for somebody else; it’s to recommend for the improvement of public safety. The public interest needs to be front and centre with regard to what we’re trying to accomplish in the Coroners Act with regard to investigations and inquests. The wording of subsection 7(1) is consistent with the inquest provisions relating to the public interest, so we’re not going to support this. We believe it may lead to a slippery slope that we don’t want to go down.

**The Chair (Mr. Lorenzo Berardinetti):** Any further debate? None? So we’ll take a vote. All those in favour of the motion? Opposed? It does not carry.

We’ll go to page 21. Mr. Dunlop.

**Mr. Garfield Dunlop:** This is another one based on some of the comments made by Terence Young.

I move that subsection 15(1) of the Coroners Act be amended by striking out “and” at the end of clause (b), by adding “and” at the end of clause (c), and by adding the following clause:

“(d) to determine what, if any, prescription, non-prescription and illegal drugs are in the body of the deceased.”

This motion will ensure that when examining a body in undertaking an investigation, the coroner will determine whether the deceased body contains any forms of drugs.

**The Chair (Mr. Lorenzo Berardinetti):** Any discussion? Mr. Kormos and then Mr. Levac.

**Mr. Peter Kormos:** It’s an attractive amendment, and it shouldn’t be necessary because a diligent coroner would be doing precisely that, but we’ve heard story after story of coroners who were less than diligent and who weren’t conducting those types of examinations in the course of their investigation, not even having determined yet whether or not to call an inquest. I say, that’s truly regrettable.

**1450**

This bill isn’t going to change the culture of aloofness, self-importance and indifference that seems to have developed around the coroner’s office and also seems to have captured many local coroners—not all, but many local coroners. When you read between the lines of the stuff that people were telling us, the stuff that we received in written submissions and comments, we were hearing stories about coroners who were insensitive, quick to jump to conclusions and less than careful in their investigation of matters, to the point where people had to investigate stuff themselves. You heard the story of a young woman whose heart was destroyed, so it could never be examined when the decision was finally made to do a thorough examination. You heard how it was the pediatric death review team—remember?—that reported her death. It was only because she had acquired this con-

dition while she was a child that the pediatric death review team had jurisdiction over it.

As I say, this bill isn't going to address those concerns that I have and, I think, many people have about the coroner's office in the broader sense. It's regrettable. It's simple enough to say, "If coroners would do this anyway, then why not put it in the statute?"

**Mr. Dave Levac:** I'm going to pick up from what Mr. Kormos was alluding to without saying it, but I'll say it and then he can debate whether or not I'm saying it properly.

The bill's design is to respond to a certain case that took off in the province of Ontario with a recognition that there need to be some rather important changes and improvements to the Coroners Act which are not defined to take care of the specific coroner whom Mr. Kormos has heard and we've heard and he believes may need a wake-up call to do their job better. If this bill does pass, there are sections in this bill that will do just that, in our hopes. You cannot legislate the ability or inability of a coroner in their capacity to do their job well.

Speaking specifically to this amendment, I would respectfully suggest to you that because of the wording, it would mean that we would have to do an autopsy and toxicology for everybody. Under those circumstances, we would see ourselves into the millions and millions of dollars almost per person in the province of Ontario. It's an extremely expensive process, because the investigators, in part of their investigation, take an inventory, take into account how much they played a role in the death as far as making toxicology mandatory, subject to the investigation requirements as well as the internal protocols when toxicology should be ordered.

You're also talking about dealing with the coroner, the pathologist and the toxicologist. They meet daily to discuss the necessary toxicology that they're finding in each body after each autopsy. While the intent is, as Mr. Kormos pointed out, to encourage improvement of something that they're already supposed to be doing, we believe that, with the passage of the bill, if it does pass, we will capture that sentiment. But we do not believe that this amendment is going to be effective province-wide—not case-by-case, but province-wide—so we won't be supporting it.

**The Chair (Mr. Lorenzo Berardinetti):** Any further discussion? None. Page 21, the motion, we'll take a vote. All those in favour? Opposed? That does not carry. That ends—

**Mr. Garfield Dunlop:** Number 22.

**The Chair (Mr. Lorenzo Berardinetti):** Before you get to that, I think that ends section 7. Shall section 7 carry? Carried.

We'll move on to section—

**Mr. Peter Kormos:** Please feel free to deal with sections 8 and 9.

**The Chair (Mr. Lorenzo Berardinetti):** Sections 8 and 9: Shall they carry? Carried.

Section 10. Mr. Dunlop.

**Mr. Garfield Dunlop:** This is another one on a recommendation of Terence Young. By the way, I think he's releasing his book on the 18th. Anyhow, he mentioned that day.

I move that section 18 of the Coroners Act, as set out in section 10 of the bill, be amended by adding the following subsection:

"Drugs

"(1.1) If, under clause 15(1)(d), the coroner determined that a prescription, non-prescription or illegal drug was in the body of the deceased, the statement referred to in subsection (1) shall identify the drug and list the risk factors associated with that drug."

This motion is related to a previous PC motion dealing with clause 15(1)(d) of the Coroners Act, and requires the coroner to inform the chief coroner, in a case where he or she determines that an inquest is unnecessary, what drugs were in the deceased's system as well as the risk factors. Doing so will help the chief coroner identify a pattern of death related to a specific drug, if any exists.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Dunlop, I'm just going to advise that because the one on page 21 didn't carry, this one is deemed redundant.

**Mr. Garfield Dunlop:** It's redundant?

**The Chair (Mr. Lorenzo Berardinetti):** It is, unfortunately.

**Mr. Garfield Dunlop:** Okay.

**The Chair (Mr. Lorenzo Berardinetti):** So we'll move on to page 23, and my apologies.

**Mr. Garfield Dunlop:** No, it's okay.

**The Chair (Mr. Lorenzo Berardinetti):** We're on page 23.

**Mr. Garfield Dunlop:** I move that subsection 18(3) of the Coroners Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Availability to public

"(3) The chief coroner shall make the findings and recommendations of a coroner's investigation, which may include personal information as defined in the Freedom of Information and Protection of Privacy Act, available to the public in both printed and electronic formats."

This motion will enhance accountability and transparency, as recommended by Judge Goudge, by ensuring that the public is always informed of the findings and recommendations of a coroner's investigation.

**The Chair (Mr. Lorenzo Berardinetti):** Any further discussion?

**Mr. Dave Levac:** Again, one of those understood ideas, but it doesn't set the reasonable threshold for the potential privacy issues. If the chief coroner reasonably believes that it is necessary in the interests of the public safety to do so, that's kind of the litmus test here so that we don't breach that threshold where the potential privacy issues would be breached on an ongoing basis. So we don't believe that this is the right way to go with this particular amendment. Although we try to be cognizant of the sensitivity of transparency, it's for the good of the public safety, and that's precisely why we do inquests

and investigations. We don't believe that that would be helpful, so we're not going to support the amendment.

**The Chair (Mr. Lorenzo Berardinetti):** Any further discussion? None? We'll take a vote on the motion on page 23. All those in favour? Opposed? That does not carry.

That ends section 10, so I'll ask the question: Shall section 10 carry? Carried.

Section 11: Shall section 11 carry? Carried.

Section 12: Before we start, Mr. Dunlop, the motion on page—

**Mr. Garfield Dunlop:** Is that redundant?

**The Chair (Mr. Lorenzo Berardinetti):** It's redundant because it was defeated earlier on, with page 21. So that one's deemed redundant and we move on to page 25, but before we do, I have to ask: Shall section 12 carry? Carried.

Section 13?

**Mr. Peter Kormos:** This, of course, is where the axis of evil begins in this legislation, because this is the notorious repeal of section 22 of the Coroners Act, which gives the minister the discretion to direct that an inquest take place. Section 22 of the existing legislation: "Where the minister has reason to believe that a death has occurred in Ontario in circumstances that warrant the holding of an inquest, the minister may direct any coroner to hold an inquest and the coroner shall hold the inquest into the death in accordance with this act, whether or not he or she or any other coroner has viewed the body, made an investigation, held an inquest, determined an inquest was unnecessary or done any other act in connection with the death." Interestingly, this repeal of section 22 should also be considered in the context of the amendments to sections 23 and 24: the repeal of 23 and the amendments to section 24.

The argument is that the minister has rarely used this discretion. Good; fine—nothing wrong with that, although I tell you this: The fact that the minister has rarely used it, I suspect, is more because of the political clout of chief coroners and the politicization of that office than it is because ministers haven't wanted to order that an inquest be held. It's the very nature of the beast. Again, the picture we're getting of the coroner's office is of a very aloof institution, coroners who consider themselves the be-all and end-all and who expect to be able to call the shots and have nobody doubt them ever, ever, ever. I bet you there are far more instances of chief coroners and their bureaucrats working over deputy ministers and ADMs than not, when a minister has—because how's a minister going to go about this? The minister, of course, is going to have his DM or ADM call the bureaucrats in the chief coroner's office and say, "What's the story here? Give us some background. Give us some material," and then all hell's going to break loose in the coroner's office. The chief coroner is going to say, "I'll be damned if I'm going to let some political flunky of a minister"—ministers come and go—"who may not even get re-elected next round or may not be a cabinet minister next round tell me how to run my office." You've been inside

these sorts of bureaucracies, haven't you, Chair? You know exactly how they operate. You were down at Metro city hall, for Pete's sake, at that cesspool of empire-building and turf protection.

**1500**

So that's what happens, and I'm sure there are more instances of ministers being beaten up by coroners. Of course, if the coroner can't get his way with the minister, the coroner will call the Premier's office and the Premier will take care of the minister, because that's how that's done. The minister will simply abandon any contemplation of using the power under section 22. It's regrettable that that's how the system works, but that's the nature, I suppose, of politicized bureaucracies.

The argument that it isn't used often, I say, is not a sound argument. I argue that it probably should have been used more often. Once again, take Jared's inquest down in Hamilton. The coroner is acting entirely within the law by ordering a joint inquest and no court is going to tell him—no court can tell him—that he can't do that, because that law is very, very clear in that regard. In my view, that was the ideal circumstance for the minister to recognize that justice and the dignity of a little boy who was murdered by his parent would best be served by not having that little boy's inquest conducted simultaneously with his murderer's. There's something just inherently repugnant about that, isn't there? There's something just foul about the fact that a kid who's a victim has his inquest conducted at the same time, in the same place and with the same jurors as the person who murdered him. It's at the very least distasteful, but it's entirely legal. And I argue that's why the minister should have this power. I argue that the minister should use it very sparingly and the minister shouldn't constantly be overruling or just automatically overruling coroners.

But ministers don't look at an issue and go home and contemplate or take long walks around Queen's Park; they rely upon their staff. They rely upon the legal staff, they rely upon counsel, they rely upon any number of resources that they have within their bureaucracies. Ministers don't sit at the word processor and type out the ministerial statements they give in the House. Harinder Takhar might, but others don't. They have bureaucracies that serve them: deputy ministers, ADMs, people who are civil servants, people who are apolitical, as well as political, staff.

This seems to me to be a safeguard, once again. The minister says, "Well, I'm not a doctor." It's not about being a doctor; it's about serving justice, and in many cases it's justice for the deceased—or justice for the little boy's mother and grandmother, who want to be able to have their story about domestic violence told so that a jury could maybe make recommendations to protect kids of parents who have violent relationships down the road.

I very specifically want to vote against section 13 of the bill, which repeals section 22. I find that's a most unfortunate turn of events. It's also the abandonment of power, and we've seen it increasingly. Pierre Trudeau said so many things that weren't as enlightened as he

would want people to believe, but he once made a comment, and this isn't an exact quote, that once a backbencher is 15 minutes away from Parliament, they're a nobody. That demonstrated his disdain for his backbenchers. But the reality is, never mind being 15 minutes away from Parliament Hill or the Legislative Assembly, when the cabinet minister is sitting in that front row, she or he is a nobody.

Increasingly, cabinet ministers want to be multiple-arm's-length from anything and everything. Indulge me for a minute. I remember when Evelyn Gigantes was forced to resign as Minister of Housing. What did Evelyn Gigantes do? There was a dispute in a non-profit housing co-op in Ottawa amongst the board members and Evelyn Gigantes attempted to mediate between the two warring factions as Minister of Housing. I thought, my God, what a delightful thing to do. Evelyn Gigantes had mediation skills and the sort of personality that could achieve that. I thought, "You're darn right the minister should be doing that." The minister should be rolling up his or her sleeves and maybe getting their hands a little dirty once in a while. She, of course, was forced to resign, because that somehow was deemed to be bizarre. I just don't understand it. It wasn't like Joan Smith going into the police station—that was long before your time; you were only a kid—

**The Chair (Mr. Lorenzo Berardinetti):** I remember that.

**Mr. Peter Kormos:** You were only a kid, though, when that happened.

Ministers are increasingly scripted, and the first thing a deputy minister tells a newly appointed minister is, "Just let me handle the scripting and so on, and we'll protect you. We'll cover you. Don't freelance. Don't ad lib." I think it's very sad.

In the 21 years that I've been here—and I watched it happen most significantly in the first Liberal government of 1985; I wasn't here at that point, but I saw it happen. It happened with Pierre Trudeau in Ottawa. A professor from out on the east coast has written a book called *The Concentration of Power*. Professor Grant—is it Grant? He's written a book. The power is increasingly monopolized in the Premier's office and controlled not even by elected people but by unelected people, and more often than not, not even by people who work here at Queen's Park or across the road, but people who are out there in high-rise, expensive, high-priced law firms, amongst other things. It's the flight from power. It's the flight from responsibility.

So you see ministers who—you know it as well as I do: Their briefing book is it. The briefing book is the answer, and wise ministers, at least those who want to keep their jobs, stick to the briefing book. They may be boring, they may be ineffective, they may not leave much of a legacy, but they're eminently successful at keeping their jobs and their cars and drivers.

We've seen this. I watched it in 1990 in the Rae government—again, more concentration of power in the Premier's office, so that by the time Mike Harris and

Ernie Eves came around, I found it more valuable to know the gatekeeper in the Premier's office—and I did; Ernie Eves had a very effective one for whom I have great regard. He was more important to know than any cabinet minister, because if you wanted something done, you spoke to him or you took him out for a coffee or dinner or, dare one do it, a drink over at Sutton Place—a unionized hotel.

This is part of that whole trend of events of ministers increasingly being irrelevant, and, indeed, not just backbenchers being nobodies but cabinet ministers being nobodies. They protect themselves from any blowback simply by saying, "I don't have the authority to do it." It's uncomfortable. I'm sure it is for the minister to have to respond to Andrea Horwath around Jared's Law—very uncomfortable. Because I suspect that the minister, in his heart, shares the same perspective about what's happening in Hamilton with Jared as Andrea Horwath and the mother and grandparents of that child. But he's been told, "Don't go near this. Don't touch it." Then he's had to submit himself to rather unpleasant grilling in question period and by the press.

This must be where you can wipe your brow now and relax, because here's one less question that a minister can be asked about. That means that ministerial responsibility is being eroded, because the minister can now say, "I have nothing to do with coroners' inquests, nothing whatsoever. Somehow I'm the Solicitor General, and somehow they're in the Solicitor General's broader bailiwick, but I have nothing to do with them. Don't talk to me, talk to the chief coroner. Oh, and if you don't like what the chief coroner tells you, go hire a lawyer and go to Divisional Court for a review," with the very limited jurisdiction that Divisional Court has in that type of judicial review.

That's not what parliamentary democracy is supposed to be all about, in my view. Maybe I'm just dating myself. Maybe I'm just old-fashioned about these sorts of things. But the abandonment, the repeal of section 22, is bad policy, in and of itself, but it's also bad policy because it's part of a direction, a general trend, which makes government and elected Parliaments far less effective.

**1510**

**The Chair (Mr. Lorenzo Berardinetti):** Thank you, Mr. Kormos. Just before I move on, the motion on page 26 is very similar to the one on—

**Mr. Peter Kormos:** These aren't motions. These are just reminders.

**The Chair (Mr. Lorenzo Berardinetti):** They're recommendations, let's say. The one on page 25, we just went over; that was Mr. Dunlop's. I think it's just giving notice that the Progressive Conservative Party recommends voting against this section as well. So shall we take these together or separately or—

*Interjections.*

**The Chair (Mr. Lorenzo Berardinetti):** We're not going to vote on these at all?

**Mr. Peter Kormos:** No. Go to page 29, but let's vote on section 13 of the bill, and I want a recorded vote.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Levac, did you want to make any comments before we do?

**Mr. Dave Levac:** I think it's important to do two things: number one, to explain that I don't subscribe to the characterization that Mr. Kormos made of this place. Although he knows that there are plenty of people who are soured to us, the collective "us," I don't subscribe to the description of what this legislation is, and in particular, what section 13—section 22—is. I want to make it clear: This coroner's problem, Dr. Smith's, created our need for a revision of the bill. This was the medical response. This was not the political response. This is to improve the Coroners Act so that we can move forward in ensuring that these things can get done. I want to stay focused on that.

Do I understand Mr. Kormos's point about the cynicism or the characterization that he's making? I understand it. I don't subscribe to it. I just don't think that it's that kind of pathetic of a circumstance. I don't hold that. I don't believe that. In my heart of hearts, I honestly believe that the things that all of us do as parliamentarians, as well as those staff that are assigned to the government of Ontario, hold to a higher cause, and hold to a higher way of thinking. So I just want it on record that I don't subscribe to that characterization.

Justice Goudge himself said, in conversation, after he saw the legislative inclusion of his recommendations that came out, that he no longer had concerns. It was not put in his report as being for or against 22, but when asked, after the legislative part of his report was put into this legislation, he indicated, "Now I can understand why you wouldn't want to do that." I don't know that we shouldn't be discounting some of the concerns that were being raised and then answered. I wanted to make sure that the answer was on the books.

As for the questions in parliament, there's absolutely going to be no reason whatsoever that an opposition member could not ask a question about a circumstance that's happened inside of the province, with an expectation that an answer would be delivered, other than to simply say, "Will you intervene"? Quite frankly, all of the other catches we're putting inside of this legislation might reduce that expectation of how many questions get asked, because the new system being put in place, proposed in the legislation, if requested and if we pass it, would probably be getting rid of a very large portion of what we're talking about today. I just wanted it on the record.

More importantly, in respect of my colleague's capacity to make his poignant and salient points, and entertain and make sure that people understand the position that he takes, I don't subscribe to them. I'm sure that a lot of us here don't have the same feeling as Mr. Kormos does, but I bow to his 22, 23 years of being in this place and watching the evolution of this place. I hearken to his advice of what to watch for, but I don't subscribe to his cynical expectations.

We'll be supporting section 13.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you.

**Mr. Peter Kormos:** Recorded vote.

#### Ayes

Levac, Moridi, Qaadri.

#### Nays

Dunlop, Kormos.

**The Chair (Mr. Lorenzo Berardinetti):** Section 13 carries.

We'll move on, then, to section 14. There is, again—14 and 15 together.

**Mr. Peter Kormos:** No, no. We've got some talking to do about section 14.

**The Chair (Mr. Lorenzo Berardinetti):** Section 14—okay. So we're on page 20—

**Mr. Dave Levac:** There's no motion in 14. Who wants to talk about this section?

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Kormos, you wanted to say something about section 14?

**Mr. Peter Kormos:** Yes. Repealing yet another section of the Coroners Act, and this is again a very interesting one, because it gives the minister the discretionary power—once again, we're repealing a minister's power—to appoint a commissioner to conduct an inquest in the place of a coroner and, furthermore, that the coroner may be called before the commissioner and shall be deemed to be a person with standing, shall have standing.

Coroners are doctors and coroners hold coroners' inquests almost in the role of a judge. Now in most jurisdictions the crown attorney—the Ministry of the Attorney General is the coroner's counsel, if you will, and you have a jury that makes their conclusions. It's my view, and maybe some of the folks here have a different view, that a commissioner enables the minister, I presume under the current section 23, to—I don't want to say "elevate" the proceedings, but in the event that a situation might be one that implicates the coroner's office, the coroner perhaps could not be perceived as being entirely neutral. This means the minister can appoint a commissioner.

I think, again, it's a valuable tool. I have no idea how many times that's taken place. I don't know if there's data—but I have no idea whatsoever. But it seems to me to be a safeguard that's built into the legislation that has some value. Again, it's not to say that any minister is going to quickly invoke that section. As I say, I've never heard of that section being invoked. But it just seems to me, if you want to talk about safeguards and protecting the interests of the public, to be a valuable thing. I wonder what, then—perhaps, Mr. Levac, the rationale for repealing it. I just find that section 23 is an interesting section of the Coroners Act.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Levac, do you have any comments? It's up to you.

**Mr. Dave Levac:** In my discussions with the more learned people who are involved in the depth of the Coroners Act, our decision is the way it is. I don't have—

**Mr. Peter Kormos:** Fair enough.

**Mr. Dave Levac:** To be very blunt, I don't have the rationale.

**Mr. Peter Kormos:** Fair enough.

**Mr. Dave Levac:** I'll do an undertaking for you, Mr. Kormos, if that would be helpful, but we're voting, so—

**Mr. Peter Kormos:** I know, but even after the fact.

**Mr. Dave Levac:** I hear your point.

**Mr. Peter Kormos:** Let's have a little post-mortem of our own.

**Mr. Dave Levac:** I hear your point, and the short answer is, I'll do that with you.

**Mr. Peter Kormos:** Recorded vote, please.

**The Chair (Mr. Lorenzo Berardinetti):** All right—

**Mr. Peter Kormos:** Do you want to have a two-minute recess?

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Dunlop stepped out and he didn't tell me he was going to come back—I'm at the will of—

**Mr. Peter Kormos:** He's younger than Mr. Levac or me so it shouldn't take him very long at all.

**Mr. Dave Levac:** Although I would say I would be longer; I do confess to that. If you want to recess for a few minutes, I'm okay, but—

**Mr. Peter Kormos:** Here he is. No, that's not Mr. Dunlop; that's Mr. Leal.

You know what? A four-minute recess would accommodate more than a couple of people.

**The Chair (Mr. Lorenzo Berardinetti):** All right. We'll recess until 3:20.

*The committee recessed from 1517 to 1521.*

**The Chair (Mr. Lorenzo Berardinetti):** I call the committee back to order. We're just about to vote on section 14.

**Mr. Peter Kormos:** Recorded vote.

**Ayes**

Leal, Levac, Moridi.

**Nays**

Dunlop, Kormos.

**The Chair (Mr. Lorenzo Berardinetti):** The section carries.

Section 15, Mr. Kormos.

**Mr. Peter Kormos:** Once again, stripping away the ministerial power and creating a disconnect between the Solicitor General, supposedly responsible for the Coroners Act, and anything that is or may be done under the Coroners Act. We're opposing this and asking for a recorded vote.

**The Chair (Mr. Lorenzo Berardinetti):** Any other comment? We'll vote, then, on section 15.

**Ayes**

Leal, Levac, Moridi.

**Nays**

Dunlop, Kormos.

**The Chair (Mr. Lorenzo Berardinetti):** The section carries.

We'll move on to section 16.

**Mr. Peter Kormos:** Chair, if I may, here we go again.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Kormos.

**Mr. Peter Kormos:** The minister's discretion is eliminated, as it is in section 17. I ask for a recorded vote on 16.

**Ayes**

Leal, Levac, Moridi, Qaadri.

**Nays**

Dunlop, Kormos.

**The Chair (Mr. Lorenzo Berardinetti):** The section carries.

We'll move on to section 17.

**Mr. Peter Kormos:** Recorded vote, please.

**Ayes**

Leal, Levac, Moridi, Qaadri.

**Nays**

Dunlop, Kormos.

**The Chair (Mr. Lorenzo Berardinetti):** That section carries.

We'll go, then, to section 18.

**Mr. Dave Levac:** I move that subsection 28(2) of the Coroners Act, as set out in section 18 of the bill, be struck out and the following substituted:

"Other examinations and analyses

"(2) A coroner may at any time during an investigation conduct examinations and analyses that the coroner considers appropriate in the circumstances or direct any person, other than the pathologist to whom the warrant is issued, to conduct such examinations and analyses."

**The Chair (Mr. Lorenzo Berardinetti):** Any discussion? None? So we'll vote on it. All those in favour of the motion? Opposed? It carries.

We'll move on to page 30. This is an NDP motion.

**Mr. Peter Kormos:** I move that section 28 of the Coroners Act, as set out in section 28 of the bill, be amended by adding the following subsection:

"Same

"(3.1) The pathologist who performs the post mortem examination shall, if the death was unexpected or sus-

picious, conduct or direct the conducting of such examinations and analyses as are available to assist in determining,

“(a) what drugs were in the deceased’s body at the time of death, including prescription drugs, other drugs that are legally available and other drugs that are not legally available; and

“(b) whether the deceased’s death was related to a disease where timing is suspect,

“having particular regard to known risks and associations such as acts of violence and SSRI anti-depressants.”

This is a response to some of the very interesting submissions made, in the last instance, by Terence Young, along with other family members of deceased persons. It’s related to the whole argument about iatrogenic deaths. You’ll note that this is not every investigation, but it’s only at that point when a pathologist is actually performing a post mortem.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Mr. Levac?

**Mr. Dave Levac:** Again, as much as that has tried to be condensed, the conducting of the tests where there are no indicators that drugs were taken or related to the death would be unnecessary and not necessarily medically meaningful. It’s based on best evidence, not routine, and under the circumstances—we also heard through research that there are an increased number of courses, workshops and educational components to try to ensure that all of the best science and the best means for detecting these situations are there.

Investigating coroners do, as part of their investigation, take an inventory of the medications and take into account how they play a role in the death. So my assumption here, as we continue to find out more about this drug issue, is that the courses, the updates and the information available to the coroners who have to take care of the known prescription drugs and any other drugs that they’re taking through family interviews—that’s part of their investigation.

We won’t be supporting this but understand carefully the deputations that were made in bringing to light the circumstances that the coroners should be facing.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further discussion on this?

**Mr. Peter Kormos:** Recorded vote.

#### Ayes

Dunlop, Kormos.

#### Nays

Leal, Levac, Moridi, Qadri, Rinaldi.

**The Chair (Mr. Lorenzo Berardinetti):** That does not carry.

Mr. Levac—

**Mr. Dave Levac:** I move that section 28 of the Coroners Act, as set out in section 18 of the bill, be amended by adding the following subsection:

“Notice to coroner

“(4.1) A pathologist who exercises a power under subsection (4) shall notify,

“(a) the coroner who issued the warrant; or

“(b) if no warrant has been issued, the coroner by whom the pathologist believes the warrant will be issued.”

1530

**The Chair (Mr. Lorenzo Berardinetti):** Any discussion? We’ll take the vote, then. All those in favour? Opposed? Carried.

On page 32, the motion.

**Mr. Garfield Dunlop:** I move that subsection 28(5) of the Coroners Act, as set out in section 18 of the bill, be struck out and the following substituted:

“Other examinations and analyses

“(5) The pathologist who performs the post mortem examination may,

“(a) conduct such other examinations and analyses as the pathologist considers appropriate in the circumstances; or

“(b) if the warrant issued under subsection (1) so provides and the coroner agrees, direct any person other than a coroner to conduct such other examinations and analyses as the pathologist considers appropriate in the circumstances.”

This came from the Ontario Coroners Association. The motion will ensure that if a pathologist directs another individual to conduct other examinations or analyses, the coroner will not only have provided the authority under the warrant, but will also consent. Doing so ensures communication between the parties that all the tests are relevant.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any other discussion?

**Mr. Dave Levac:** We won’t be supporting the amendment. However, we want to point out clearly that we’ve already amended the bill to include the communication piece that everyone is talking about, and the proposed amendment narrows the ability and discretion of the pathologist to direct others to perform the necessary examinations and analyses required in the circumstances. It would also require that the pathologist obtain a coroner’s consent before directing others to perform the necessary examinations and analyses pertaining to the post mortem. I think what we’re saying here is that we’re already covering that off and we believe that it does narrow the discretion and the ability of the pathologist, so we won’t be supporting the amendment.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further debate? None. So we’ll take a vote: All those in favour of the motion? Opposed? That does not carry.

Page 33?

**Mr. Dave Levac:** I move that subsection 29(2) of the Coroners Act, as set out in section 18 of the bill, be amended by striking out “A person who conducted any

other examination or analysis specified by the coroner or the pathologist under section 28” and substituting “A person, other than the pathologist who performed the post mortem examination, who conducted any other examination or analysis under section 28”.

This is in response to the coroners’ association, in capturing the essence of what it was that we talked about in the previous amendment.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Debate? All those in favour? Opposed? That carries.

Page 34, Mr. Kormos.

**Mr. Peter Kormos:** I move that section 29 of the Coroners Act, as set out in section 18 of the bill, be amended by adding the following subsections:

“Death related to health treatment

“(2.1) A report under subsection (1) or (2) shall indicate whether the person making the report is of the opinion that treatment by a member of a college within the meaning of the Regulated Health Professions Act, 1991 contributed to the death.

“Same

“(2.2) Without limiting the generality of subsection (2.1), treatment includes prescribing or recommending a drug.”

Again, this is in response to the discussion about iatrogenic deaths.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Mr. Levac?

**Mr. Dave Levac:** While we understand that it is in response to the iatrogenic deaths, the problem with the amendment, which we won’t be supporting, is that for practical purposes—in the vernacular that Mr. Kormos would suggest—they become quasi-police to pathologists and coroners. It changes the nature of their role under the act and it speaks against the spirit of the previous amendments we passed collectively to open up the communication between all of those sectors. So we won’t be supporting the amendment.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you. Any further discussion? None?

**Mr. Peter Kormos:** Recorded vote, please.

#### Ayes

Dunlop, Kormos.

#### Nays

Leal, Levac, Moridi, Qaadri, Rinaldi.

**The Chair (Mr. Lorenzo Berardinetti):** That does not carry. Shall section 18—

**Mr. Peter Kormos:** No, just a minute.

**The Chair (Mr. Lorenzo Berardinetti):** Sorry, Mr. Kormos. Do you wish to speak to the section?

**Mr. Peter Kormos:** The effective repeal of section 29—just for information’s sake, is the pituitary gland no longer used in growth hormone deficiency?

**The Chair (Mr. Lorenzo Berardinetti):** I’m sorry?

**Mr. Peter Kormos:** Is the pituitary gland no longer used in growth hormone deficiency?

**Mr. Dave Levac:** It’s my understanding that it is not.

**Mr. Peter Kormos:** When did it stop?

**Mr. Dave Levac:** I will defer to expert—

**Mr. Peter Kormos:** Again, this is just an interesting historical thing. I don’t know how long that section has been effective, but in the context of the whole organ donation thing, it gives people performing the post-mortems the authority to, as they say, harvest pituitary glands.

*Interjection.*

**Mr. Dave Levac:** Fifteen to 20 years.

**Mr. Peter Kormos:** So people can now go to their graves with their pituitary glands intact.

**Mr. Dave Levac:** Without having them harvested.

**Mr. Peter Kormos:** All sorts of Ontarians are just elated.

**Mr. Dave Levac:** I would say yes.

**Mr. Peter Kormos:** If you want my pituitary gland, Dave, come and get it, in due course.

**Mr. Dave Levac:** I’m hoping, Mr. Kormos, that it would be reversed, because I’d like to have you stay a lot longer than I probably will.

**Mr. Peter Kormos:** It would tick off a whole lot of people if I did. I’m reminded of that Monty Python skit about the organ donor card.

**Mr. Dave Levac:** Carry on, Mr. Chairman. He got me in a soft spot.

**The Chair (Mr. Lorenzo Berardinetti):** All right. Shall section 18, as amended, carry? Carried.

Sections 19, 20, 21, 22, all the way up to 27: Is it okay to keep them together?

**Mr. Peter Kormos:** Feel free.

**Mr. Dave Levac:** I’m in.

**The Chair (Mr. Lorenzo Berardinetti):** Shall sections 19 to 27 carry? Carried.

That brings us to section 28 and page 35. Mr. Levac.

**Mr. Dave Levac:** I move that subsection 56(1) of the Coroners Act, as set out in section 28 of the bill, be amended by adding the following clause:

“(e.1) defining ‘restrain’ for the purpose of subsections 10(4.7) and (4.8);”

I think we know why we’re doing that from the previous amendment.

**The Chair (Mr. Lorenzo Berardinetti):** Any discussion or debate? No? All those in favour? Opposed? Carried.

Page 36: Mr. Levac.

**Mr. Dave Levac:** I move that subsection 56(2) of the Coroners Act, as set out in section 28 of the bill, be amended by adding the following clause:

“(h) requiring and governing the disclosure, collection and use of information, including personal information within the meaning of the Freedom of Information and Protection of Privacy Act, about coroners, pathologists and other members of the College of Physicians and Surgeons of Ontario among the chief coroner, the chief

forensic pathologist, the oversight council and the College of Physicians and Surgeons of Ontario.”

I don’t think I need to explain that and I won’t, unless there’s a question.

**The Chair (Mr. Lorenzo Berardinetti):** Any discussion? None? All those in favour? Opposed? Carried.

Page 37 is a government motion. Mr. Levac.

**Mr. Dave Levac:** I move that section 28 of the bill be amended by adding the following subsection:

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

“Non-application of Legislation Act, 2006, part III

“(4) Part III (Regulations) of the Legislation Act, 2006 does not apply to,

“(a) any rules made by the chief forensic pathologist respecting the maintenance of the register of pathologists under section 7.1 or the authorization of pathologists to provide services under this act; or

“(b) the rules of procedure for inquests made by the chief coroner under section 50.1.”

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Kormos.

**Mr. Peter Kormos:** I’ve got to ask about this. What does it mean?

**Mr. Dave Levac:** It’s a technical standard, a provision used in conjunction with rule-making powers that exist. It’s necessary in order to avoid the procedural steps involved in treating rules as regulations and making sure that a rule that is applied by the chief coroner or the chief forensic pathologist doesn’t constitute a regulation. So we need to separate the two. Bill 115 confers the authority on the chief coroner to make rules with respect to procedure at inquests, not regulations.

**Mr. Peter Kormos:** Quite right: “50.1 The chief coroner may make additional rules of procedure for inquests.”

**Mr. Dave Levac:** For inquests. If there’s a procedural—

**Mr. Peter Kormos:** Yes, but why do we need this section? Section 50.1 seems to be very clear and unequivocal.

**Mr. Dave Levac:** I’ll defer, but I’ll tell you what my understanding is, and then I’ll either be a lawyer by the end of this or not. That is, inside of the Legislation Act of 2006, it says that anyone who has these authorities of the regulatory stream—and we’re making a differentiation between regulation and rules. We’re keeping them out of the Legislation Act.

I’ll defer back to see if I’ve come close to being a lawyer.

1540

**The Chair (Mr. Lorenzo Berardinetti):** Does staff wish to comment upon it? If you could just come forward and identify yourself again, please.

**Mr. Dave Levac:** I’m just curious to see if I was close.

**Mr. Jay Lipman:** I would say so. The Legislation Act—

**The Chair (Mr. Lorenzo Berardinetti):** I’m sorry, if you could just identify yourself again for Hansard.

**Mr. Jay Lipman:** Jay Lipman, counsel, Ministry of Community Safety. The Legislation Act says that any rule, bylaw, order—various things—is a regulation for the purposes of that act, meaning that it has to be filed with the registrar of regulations, it needs to be published on e-Laws and so on. In order to avoid those requirements for rules, you have to in effect override part III of the legislation—and it’s very common to do so.

The most common place you’ll see it is in the Statutory Powers Procedure Act. First of all, the act authorizes tribunals to make rules and procedure. Section 25.1 of that act says that all of those rules made by a tribunal are not caught by the Legislation Act—the same provision that we have.

**Mr. Peter Kormos:** A tribunal, like a WCAT, has rules of procedure.

**Mr. Jay Lipman:** Yes.

**Mr. Peter Kormos:** Is that a good idea? Because if they’re published, then people have access to them in a ready manner, right? If they’re on e-Laws, people have ready access to them. Of course, I hear you, and you see, it’s a pattern, but I’m saying, is it a good pattern? Why shouldn’t rules of procedure for an inquest be published in the same way as any other regulation? You’re not detracting from the power of the chief coroner to make those rules, right? That office clearly has that power. So why would you want them not to be published like other regulations?

**Mr. Jay Lipman:** I think it’s a process issue and I think that rules of procedure of a tribunal or the coroner would be readily available to the parties who are intending to participate in an inquest and so on. So you’re right, it’s not as broadly published. But I think that they put them on websites and they do other things to make them available.

**Mr. Peter Kormos:** Okay. Thank you.

**Mr. Dave Levac:** Chair, can I just—

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Levac?

**Mr. Dave Levac:** Because I do believe that we need to be clear about this, I have a curious question, and that is, the rules apply to each inquest so that the rules are not consistent and standard rate? I can just drop these rules, and no matter what, every inquest has to do it this way, and each inquest brings rules—or not?

**Mr. Jay Lipman:** I think the intention would be that it’s more like the rules of a tribunal, which are the rules that will always govern. That doesn’t mean that the presiding coroner can’t make specific rules.

**Mr. Dave Levac:** That’s what I was getting at, that if a coroner makes a rule pertaining to the specific case that he or she is investigating, because of circumstances, they need to put this rule in. We would then be holding things up by going through the rest of the process according to the Legislation Act. You’d have to do other things before you could get those rules laid out and submitted to everybody else.

**Mr. Jay Lipman:** I think the primary concern is about the general rules—not the rules that are made by a coroner while presiding at an inquest, but the general rules—

and keeping them up to date. The problem is they have no legal effect if they're regulations and they're not filed, right? So it is sort of an administrative burden to do this, which is what we're trying to overcome.

**Mr. Dave Levac:** I'm still going to support it.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you for your explanation, sir.

The government motion on page 37: All those in favour of the motion? Opposed? The motion carries.

Shall section 28, as amended, carry? Carried.

Shall section 29 carry? Carried.

Section 30—

**Mr. Peter Kormos:** I'm not moving any amendments to section 30.

**The Chair (Mr. Lorenzo Berardinetti):** All right, fine. Shall section 30 carry? Carried.

Shall section 31 carry? Carried.

Shall the title of the bill carry? Carried.

Shall I report this bill, as amended—

**Mr. Peter Kormos:** One moment, Chair.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Kormos.

**Mr. Peter Kormos:** This has been an interesting exercise. Dr. Smith and his butcher's approach—no, I have more respect for butchers. He's beyond negligent: malicious and mean-spirited. He's not only a disturbing person; I suspect he's disturbed as well. He has sent so many innocent people to jail. That is of course what prompted the Goudge inquiry, and this is a response to the Goudge inquiry.

I have a great deal of respect for Judge Goudge. One of the interesting things, though, in my view, that has been said is that Smith didn't operate in a vacuum. Crown attorneys loved getting convictions, and they got them with Dr. Smith. I shouldn't even call him Dr. Smith because I have more respect for doctors. Police loved him because he gave evidence that supported the oftentimes tunnel vision that police get when they're conducting an investigation. They focus on one person as an accused, and rather than looking at other possible suspects and rather than looking for evidence that exculpates that person, they only want evidence that convicts them. Judges—good God, judges couldn't sense a pattern here? High-priced judges were accepting Smith's evidence. They were doing the convicting.

They were sending the convicted people off to lengthy jail terms, and jail terms that, I don't have to tell you, are very unpleasant. I don't care how tough you are; you go to—because most of these convictions resulted in penitentiary sentences—Millhaven for killing your baby by shaking it, and you do what is colloquially called “hard time.” The phrase “hard time” doesn't begin to describe what your daily life is in that prison.

This is a response to Goudge, but I say it's not a real response to the whole Smith fiasco. He had peers. He had colleagues. He had ministerial oversight, deputy ministers and ADMs who were making inquiries about that office. A whole lot of people were collaborators in the misdeeds of Dr. Smith: police, crown attorneys, judges, bureaucrats, other pathologists and the College of Phys-

icians and Surgeons. Smith should have been turned in to the College of Physicians and Surgeons a long time ago. One wonders why not a single doctor—not a single doctor—had the gumption to turn him in, because surely there were people out there who were suspicious.

I agree that there are two elements of this. The technology has changed. Now, a whole lot of the causation of baby deaths, baby shaking amongst other things—what was state-of-the-art technology back when I was a lawyer 25 or 30 years ago clearly became outdated. Here it's not just the technology changing—that was part of Goudge's considerations—or the science changing. It was this guy, Smith, making a good living by maliciously and falsely convicting people.

I've often said and always believed that there's only one thing more abhorrent than a criminal who perpetrates a vicious crime going free, and that's an innocent person being found guilty. Can you imagine? Can you imagine for just a minute what it must have been like for any one of those innocent people to hear a judge or a jury say, “I find you guilty as charged. By the way, you're sentenced to eight years in a penitentiary”? Of course, these people plead innocence, and they cry out that they're innocent, and we don't believe them, because a doctor gave evidence. We just dismiss these people as justifying their conduct.

I'm sure you know that the person who insists on their innocence has little likelihood of getting parole because they don't show the necessary contrition and remorse. So these same people—because, come on, to kill your own child is in and of itself a heinous act, a depraved act. But to admit to killing your child when you didn't just to get parole is something that good people are likely to be incapable of doing. A good person wouldn't want to admit to killing their child under any circumstances, would they? So these people were denied parole because they wouldn't admit to killing their child, and all the while, high-priced help stood by and watched and watched and watched.

This bill doesn't address that. This bill doesn't address the ivory tower culture, the “we know better than you” culture. It doesn't address the tunnel vision in our criminal justice system that leads to false convictions because the police focus on—and they get a mindset. As I say, they dismiss exculpatory evidence. In the days when many of these convictions took place, before the charter had matured, you didn't even have disclosure to defence counsel. So the police and the crown didn't have to provide defence counsel with any exculpatory evidence. Now they do, of course; it's a charter argument if they don't.

I'm pleased to have been involved in this, but I'd be more pleased if there was greater acceptance of responsibility by all of the players in the trail of carnage that Smith left behind. If anybody belongs in a cell at this point, it should be Smith, for as long as he could possibly be kept, and quite frankly, sharing it with the meanest, toughest, ugliest, tattooed biker that ever walked this earth.

**The Chair (Mr. Lorenzo Berardinetti):** Shall I report—

**Mr. Dave Levac:** I do have—

**The Chair (Mr. Lorenzo Berardinetti):** My apologies. Mr. Levac.

**Mr. Dave Levac:** No problem; I understand. I'm always interested and listen intently to Mr. Kormos. Under some of the circumstances in terms of what he was indicating, that he doesn't think the bill will address certain things, that may be the fact. There always is legislation to improve. There is legislation that has existed for an awful long time that has not been improved. I think, on a go-forward basis, the very fact that this did become a celebrated case and the bushel basket was removed—I do believe that there are segments of this particular act that would address some of the concern that Mr. Kormos has expressed. The characterization, again, of some of those people, I don't necessarily subscribe to, but I would also acknowledge that there's more to do and there are better ways to do the things that we've always done, and hopefully, we will continue to do that.

I wanted to spend just a short moment to thank each and every one of the committee members for their thoughtful diligence, their thoughtfulness in the amendments and the attempts to improve the legislation. I requested that we try to find those common areas where we could agree and move forward.

I also want to thank staff. I want to thank, in particular, most importantly, those who bared their souls in front of us and made deputation either on a personal level or a professional level to try to improve the case of what the coroner does in the province of Ontario for the safety of our communities. I would also ask that we keep in our minds tomorrow—which is those people who continue to receive the type of treatment that no one should receive and that we continue to dig as deep as we can to make it better.

I'm not trying to just use Pollyannaish language. I'm trying to pull together some of the important thought that

needs to be put out there to insist that we try to do our best. So I compliment all of those particular people who brought to us strong recommendations. As the process goes, as Mr. Kormos knows and Mr. Garfield Dunlop knows, these are difficult things to kind of navigate through. We try to do the best we can and I wouldn't want to characterize anyone as not trying to do the best.

Can we do better? The short answer is yes, and I think we will do better as we go through. It won't always be the members of the Liberal Party sitting across here—it hasn't always been, it won't always be in the future—it'll happen to all of us, and I think we should leave charged with trying to find the best pieces of legislation we can. So I thank each and every one of you for the work that you've done.

**The Chair (Mr. Lorenzo Berardinetti):** Mr. Leal?

**Mr. Jeff Leal:** I'll just take a moment to respond to Mr. Kormos. One of those people who was charged was a constituent in my riding, Brenda Waudby, who was unfairly accused of murdering her daughter, baby Jenna. She met with me on a number of occasions, and I don't have the appropriate words to describe what she shared with me during what—as a father of two children, I mean—was the most traumatic experience that a parent could ever go through. She avoided jail because there was still the police investigation that was ongoing, and I guess, if there is a silver lining in her case, she was not put in jail. But I appreciate your comments, and I know what she went through.

**The Chair (Mr. Lorenzo Berardinetti):** No further comments?

Shall I report the bill, as amended, to the House? All those in favour? Opposed? Carried.

Do I have a motion to adjourn?

**Mr. Dave Levac:** Adjourn. Just adjourn.

**The Chair (Mr. Lorenzo Berardinetti):** Thank you, everybody.

*The committee adjourned at 1553.*







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Mr. Peter Kormos (Welland ND)

Mr. Jeff Leal (Peterborough L)

Mr. Dave Levac (Brant L)

Mr. Reza Moridi (Richmond Hill L)

Mr. Lou Rinaldi (Northumberland–Quinte West L)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Mr. David Zimmer (Willowdale L)

### Substitutions / Membres remplaçants

Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)

Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

### Also taking part / Autres participants et participantes

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### Clerk / Greffière

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### Staff / Personnel

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