



ISSN 1710-9477

Legislative Assembly
of Ontario
Second Session, 39th Parliament

Assemblée législative
de l'Ontario
Deuxième session, 39^e législature

Official Report of Debates (Hansard)

Thursday 20 May 2010

Journal des débats (Hansard)

Jeudi 20 mai 2010

**Standing Committee on
Social Policy**

Retirement Homes Act, 2010

**Comité permanent de
la politique sociale**

Loi de 2010 sur les maisons
de retraite

Chair: Shafiq Qadri
Clerk: Katch Koch

Président : Shafiq Qadri
Greffier : Katch Koch

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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
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
SOCIAL POLICY**

**COMITÉ PERMANENT DE
LA POLITIQUE SOCIALE**

Thursday 20 May 2010

Jeudi 20 mai 2010

The committee met at 1403 in room 228.

RETIREMENT HOMES ACT, 2010
LOI DE 2010 SUR LES MAISONS
DE RETRAITE

Consideration of Bill 21, An Act to regulate retirement homes / Projet de loi 21, Loi réglementant les maisons de retraite.

The Chair (Mr. Shafiq Qaadri): Colleagues, welcome. As you know, we're here to finish up clause-by-clause on Bill 21, An Act to regulate retirement homes. Welcome to all.

Ms. Witmer, did you want to just officially, with reference to motion 32—

Mrs. Elizabeth Witmer: Yes. Based on government motion 33, I'm going to withdraw 32.

The Chair (Mr. Shafiq Qaadri): Thank you.

We'll now proceed to government motion 33.

Mr. Lou Rinaldi: Can we get a few seconds, Chair?

Interjection.

The Chair (Mr. Shafiq Qaadri): So government motion 33. Mr. McMeekin.

Mr. Ted McMeekin: I move that subsection 68(1) of the bill be struck out and the following substituted:

“Restraints prohibited

“(1) No licensee of a retirement home and no external care providers who provide care services in the home shall restrain a resident of the home by the use of a physical device or by the administration of a drug except as permitted by section 71.”

The Chair (Mr. Shafiq Qaadri): Are there any comments? Mr. Miller.

Mr. Paul Miller: It appears that the government is trying to give the appearance that they're correcting aspects of this bill with respect to restraints, but there's—

The Chair (Mr. Shafiq Qaadri): Pardon me, Mr. Miller, I'm just going to intervene. I think we need to get the right motion read.

Interjection.

Mr. Ted McMeekin: That's the motion I read.

The Chair (Mr. Shafiq Qaadri): I just need to convince our greffier ici. I need to convince him that's what you read.

Mr. Ted McMeekin: Having run a bookstore for years, I'm reasonably good at reading what's in front of me.

Interjection.

The Chair (Mr. Shafiq Qaadri): Are we content?

Mr. Paul Miller: Everybody happy now?

The Chair (Mr. Shafiq Qaadri): Mr. McMeekin, maybe I can just ask you to read it again to calm various punctilious grammarians who are here.

Mr. Ted McMeekin: I move that subsection 68(1) of the bill be struck out and the following substituted:

“Restraints prohibited

“(1) No licensee of a retirement home and no external care providers who provide care services in the home shall restrain a resident of the home in any way, including by the use of a physical device or by the administration of a drug except as permitted by section 71.”

The Chair (Mr. Shafiq Qaadri): Thank you. I now give the floor to Mr. Miller. Go ahead, please.

Mr. Paul Miller: Thank you, Mr. Chairman. The government is trying to give the appearance that they're correcting the wrong aspects of the bill in respect of restraints, but there essentially is absolutely no change to this. We've stuck to this position all the way through, that there should be no restraints except under the common law. No home administration should be allowed to restrain people unless it's done by the letter of the law, and this amendment does absolutely nothing to change that.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. Ted McMeekin: We had some great leadership from Frances Lankin, you may recall, and that was what changed the situation then. It was inspired leadership—leadership that all members of the Legislative Assembly responded to positively, and this is consistent with that. She showed some great insight and moved us forward, and we want to keep the spirit of the changes she spirited for us well. That's why this motion is here.

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Paul Miller: Recorded vote, please.

Ayes

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

Nays

Paul Miller.

The Chair (Mr. Shafiq Qaadri): Carried.

We proceed now to NDP notice of motion 33.1. Mr. Miller.

Mr. Paul Miller: Notice for sections 68 and 70: The NDP recommends voting against sections 68 and 70.

If the committee wishes to remove an entire section from the bill, the rules of parliamentary procedure require that the committee vote against the section, rather than pass a motion to delete it. So we're, obviously, against it.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed now to consider this section as amended. Shall section 68, as amended, carry? Carried.

We'll now proceed—

Mr. Paul Miller: Recorded vote, please. I mean—

The Chair (Mr. Shafiq Qaadri): Fine. Shall section 68, as amended, carry?

Ayes

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

Nays

Paul Miller.

1410

The Chair (Mr. Shafiq Qaadri): Carried.

Section 69, PC motion 34. Ms. Witmer.

Mrs. Elizabeth Witmer: The PC Party recommends voting against sections 69 and 70.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote unless there are any comments? Mr. Miller.

Mr. Paul Miller: Would the member please explain her reasoning for this?

Mrs. Elizabeth Witmer: I think it's going to be defeated. I can withdraw it if you like.

Mr. Paul Miller: No, no. I just wanted to know your explanation of why you want it done. What we see in this—I just want clarification why they are voting against the use of personal assistance devices, because I have no idea what they would do with this. Could it be a typo, or are we just voting against section 70? I'm not sure what's going on here.

Mrs. Elizabeth Witmer: I have no doubt that the critic would be able to give you a complete explanation as to why that would be his recommendation.

Mr. Paul Miller: Okay.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we'll proceed to the vote on section 69. Shall section 69 carry? Carried.

We proceed now to section 70, NDP motion 34.1.

Mr. Paul Miller: I move that clause 70(3)(d) of the bill be amended by striking out "or another prescribed person".

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Vic Dhillon: We will not be supporting this, as this regulation-making power was added to provide flexibility. In particular, this flexibility will enable us to follow the Ministry of Health's lead. It is not intended to dilute the protections residents will have in respect of

confinement. Currently, we have no intention of making further regulations on this.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Miller.

Mr. Paul Miller: This is 34.1, correct?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Paul Miller: This eliminates the right for additional persons other than physicians or nurse practitioners to recommend confinement. Only highly trained persons should be able to make that decisions, not administrators of homes. So we feel that this is really out of order here and it's not going to be constructive for the situation for our seniors. We will not be supporting this.

I think I'll save you a lot of aggravation, Mr. Chairman. As I asked you the other day, all the NDP motions will want recorded votes. You said it was okay the other day; I thought it carried on for today. You looked like you had to go backwards, but I had asked for that the other day.

The Chair (Mr. Shafiq Qaadri): And you'd like to continue now.

Mr. Paul Miller: I would like to continue with that.

The Chair (Mr. Shafiq Qaadri): Certainly, as you like. We'll proceed to the vote, then. NDP motion 34.1: recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

NDP motion 34.2.

Mr. Paul Miller: I move that subsection 70(6) of the bill be amended by striking out "a review described in the regulations" and substituting "a review by the Consent and Capacity Board".

The explanation for this is that ACE—you know that organization—felt very strongly about this. They're the legal representatives of huge senior groups throughout our province. This motion helps to ensure that all reviews of a resident's confinement are heard by the Consent and Capacity Board, which already hears the applications under the Mental Health Act. An experienced body should be the place where reviews are heard, not something left to regulations. That's what we feel about this.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Dhillon.

Mr. Vic Dhillon: We will not be in support of this. The intent is to utilize the health Consent and Capacity Board for this process, and we intend to put this in the regulations.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. Paul Miller: Can he repeat that, please? He agrees with the capacity board there? Is that what I heard you say?

Mr. Vic Dhillon: No.

Mr. Paul Miller: You don't want to do that? Could you repeat what you just said? The last two sentences?

Mr. Vic Dhillon: The intent is to utilize the health Consent and Capacity Board for this process, and we intend to put this in regulations.

The Chair (Mr. Shafiq Qaadri): Maybe I can just invite everyone to aim at their microphone as well. We're having some hearing issues here.

We'll proceed to the vote. Those in favour of NDP motion 34.2—recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

On to 34.3, NDP motion: Mr. Miller.

Mr. Paul Miller: I move that subsections 70(7) to (10) of the bill be struck out and the following substituted:

“Conduct of review

“(7) The review shall be conducted in accordance with the regulations.

“Contacting a rights adviser

“(8) If a substitute decision-maker of a resident of a retirement home has, on the resident's behalf, consented to the resident's confinement to a secure unit of the home, the licensee of the home shall promptly contact a rights adviser on behalf of the resident and give the resident both written and verbal notice of having done so.”

Again, ACE, who as a law firm represents several seniors' organizations, huge seniors' organizations in our province, felt very strongly about this. Bill 21 creates a new, weaker system of rights advice, and this motion corrects it. The NDP motion makes it an obligation of the retirement home to contact a rights adviser when a substitute decision-maker agrees to confinement, rather than only complying on the insistence of the resident.

The ACE brief made this quite clear, and it makes sense to me that the person who may have been appointed will not necessarily at all times have the best interests of the resident in their consideration. They think that this, a third party being contacted about this move—the resident may have Alzheimer's. The resident may be in a situation where they're really not making calls for themselves, and this person, this individual—we want a third group to be able to oversee what may possibly be a bad decision by the person who's representing the home.

Once again, this is a no-brainer. It's just a safeguard system for the resident. I don't know why anyone would vote against this.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. Mr. Dhillon?

Mr. Vic Dhillon: The Ontario Seniors' Secretariat consulted extensively with the Ministry of Health and Long-Term Care in the development of the proposed act.

By no means are we intending to dilute the protections; rather, we intend to adopt and customize Health Care Consent Act provisions to match up with our legislation.

The Chair (Mr. Shafiq Qaadri): Thank you.

Mr. Paul Miller: The secretariat does not necessarily represent all elderly people in this province. ACE has for years—decades—represented discrepancies, represented citizens who felt they weren't dealt with fairly. I'm not quite sure I'd rely totally on the secretariat to make the decisions for seniors in this province. I think this is a bad move and I think it's going to come back and bite you.

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed to the vote, then—recorded—on NDP motion 34.3.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

NDP motion 34.4.

Mr. Paul Miller: I move that subsection 70(11) of the bill be amended by striking out “If a rights adviser is contacted by the resident or by the licensee on behalf of the resident” in the portion before clause (a).

The reason for this one is that it's similar to the one above. It removes uncertain language about whether a rights adviser is contacted or not.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Dhillon.

Mr. Vic Dhillon: Again, we will not be in favour of this as we've consulted extensively with the Ministry of Health and Long-Term Care on this issue and believe that the bill's current approach appropriately balances a resident's right to rights advice and the obligations of a licensee.

Mr. Paul Miller: Once again, I think the government is consulting one group. They don't speak for all seniors in this province. I believe ACE, who represents legally all situations in homes and any other situations that crop up for seniors in this province, was not consulted. I really think that that was one of the most important bodies, and once again, the ministry did an end-run: It took just one group's advice on this particular situation and did not deal with ACE at all, and ACE is a very important organization.

The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed to the vote—recorded.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 70 carry?

Section 71: PC motion 35.

1420

Mrs. Elizabeth Witmer: I'm going to withdraw that motion.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. PC motion 35, withdrawn. NDP motion—

Mr. Vic Dhillon: Motion 35.1, Chair?

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Vic Dhillon: Was that 35 or 35.1?

The Chair (Mr. Shafiq Qaadri): PC motion 35 has now been withdrawn, therefore we will proceed now to NDP motion 35.1. Mr. Miller?

Mr. Paul Miller: I move that subsection 71(1) of the bill be struck out and the following substituted:

“Common law duty re restraint

“71(1) Nothing in this act authorizes a person to detain or restrain a mentally capable resident in a retirement home except in accordance with the common law.”

The purpose of this is to clearly state that no mentally capable resident shall be restrained or detained except as allowed under common law. Once again, if you look at ACE's submission, they totally think that this is going to be challenged more than once or twice in a few months, as soon as this is done. As soon as you start restraining people under regulations, ACE and their law firm will be moving in that direction. Just a heads-up.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. Any further comments on 35.1?

Mr. Vic Dhillon: As noted, the proposed legislation allows for confinement to a secure unit, but only where a whole host of safeguards are met, including consent. Nothing in this act affects the common-law duty to restrain or confine a person to a secure unit. This issue has been clarified by government amendment. Except in accordance with the common-law duty, no person may be restrained regardless of that person's mental capability. We will not be voting for this.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Miller?

Mr. Paul Miller: I'd like to ask the parliamentary assistant: Who made these decisions about what safeguards are in place? What group made that? Did you consult with all groups that deal with seniors in this province about safeguards?

Mr. Vic Dhillon: There were extensive consultations, as we've stated. We met with—

Mr. Paul Miller: Who were the groups you dealt with?

Mr. Vic Dhillon: We met with a variety of stakeholders from various sectors. I mean, it's a long list. Maybe I can have the ministry staff further elaborate on that.

Mr. Paul Miller: Just a quick question: Is ACE on your list?

Mr. Michael Dougherty: ACE was part of the consultations in 2007, and we also discussed—

Mr. Paul Miller: Did you follow their guidelines or did you go ahead with your own?

Mr. Michael Dougherty: Actually, we listened to them and then we also listened to the Ministry of Health, and we took the best advice—

Mr. Paul Miller: ACE isn't happy. You may have listened, but I don't think you implemented a lot of their things. Anyways, moving on.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the recorded vote on NDP motion 35.1.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 71 carry? Carried.

We'll do block consideration, if it's the will of the committee, of sections 72 to 75 inclusive. Shall they carry? Carried.

We'll now proceed to section 76, NDP motion 35.2. Mr. Miller?

Mr. Paul Miller: I move that subsection 76(1) of the bill be amended by striking out “may” and substituting “shall”.

This is self-explanatory. “May”? May do it, may not do it. “Shall” is a very common word used in litigation: “shall do it,” not “may do it.” Very simple.

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Vic Dhillon: We'll be voting against this but introducing another amendment to clarify the government's intention.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed, then, to the vote on NDP motion 35.2.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Government motion 35.3, Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much, Chair. I move that subsection 76(1) of the bill be struck out and the following substituted:

“Inspectors

“76(1) The registrar shall appoint inspectors as are necessary for the purposes of this act.”

This is, again, just to clarify the government's intention in this area.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. Paul Miller: I'd like a clarification. What do you mean, the government's position? I'd like you to clarify why you're changing this. It may be your position; it may not be mine. What are you doing here?

Ms. Bethany Simons: Bethany Simons, counsel to the Ontario Seniors' Secretariat. In response to the NDP motion, we saw that this was an opportunity to clarify in the drafting that inspectors will be and shall be appointed in order to carry out their responsibilities under the act. They will be appointed as necessary for the purposes of the act.

Mr. Paul Miller: So you agree with the last motion, then? They "shall," not "may."

Ms. Bethany Simons: That's right.

Mr. Paul Miller: I don't know why you didn't just pass mine. It would have saved you a lot of aggravation. Anyways.

Mr. Ted McMeekin: It's just to be clear.

Mr. Paul Miller: Okay.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote then. Government motion 35.3: Those in favour? Those opposed? Government motion 35.3 carries.

Shall section 76, as amended, carry? Carried.

Block consideration: Sections 77 to 78, shall they carry? Carried.

Section 79, government motion 36: Mr. Dhillon.

Mr. Vic Dhillon: I move that subsection 79(7) of the bill be amended by striking out "(6)" and substituting "(5)."

This is a technical amendment that simply corrects an incorrect cross-reference.

The Chair (Mr. Shafiq Qaadri): Comments? We'll proceed to the vote. Those in favour of government motion 36? Opposed? Carried.

Shall section 79, as amended, carry? Carried.

Block consideration: Sections 80 to 85 inclusive, shall they carry? Carried.

Section 86, NDP motion 36.1. Mr. Miller.

Mr. Paul Miller: I move that section 86 of the bill be amended by adding the following subsection:

"Copy of final inspection report

"(2) An inspector who conducts an inspection under paragraph 2 of section 84 or under section 85 shall give the final inspection report described in subsection 77(14) to the complainant in addition to the persons and entities to whom the inspector is required to give the report under that subsection."

The reason for this one is the same as above: It obligates the registrar to provide complainants the final report of the inspection that their complaint triggered.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon.

Mr. Vic Dhillon: Chair, this amendment is unnecessary, as complainants will have access to summaries of inspection reports through a range of mechanisms. Edited copies of final inspection reports must be made available in the retirement home and provided to the residents' council, and a summary is to be posted on the authority's public registry. These inspection reports must be edited before they are released because they may contain

personal information or personal health information. I will not be in support of this.

The Chair (Mr. Shafiq Qaadri): Further comments?

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 86 carry? Carried.

Shall section 87 carry? Carried.

Section 88, PC motion 37: Ms. Witmer.

Mrs. Elizabeth Witmer: Yes, based on information, I'll be withdrawing that.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer.

NDP motion 37.1: Mr. Miller.

Mr. Paul Miller: I move that subsection 88(11) of the bill be struck out and the following substituted:

"Appeal to the board

"(11) The complainant may appeal a decision of the complaints review officer under subsection 9 to the prescribed entity in accordance with the time period that is prescribed and other requirements, if any, that are prescribed.

"Appeal entity

"(12) The prescribed appeal entity for the purpose of subsection 11 shall not be the authority or any person employed, retained or appointed by that authority."

The reason for this is that it is essential that there is both the right to appeal as well as the right to appeal to a transparent body.

The Chair (Mr. Shafiq Qaadri): Comments?

1430

Mr. Vic Dhillon: The authority is tasked with ensuring compliance with the act and exercising its enforcement capabilities to investigate non-compliance. Complaints are an important tool to bring matters to the attention of the authority and will be important to help the authority to identify non-compliance of licensees. The current approach in the bill to complaints is appropriate for the regulatory structure proposed; however, this policy direction can be reviewed after five years under the process set out in section 120 of the act.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Miller.

Mr. Paul Miller: Mr. Chairman, you're allowing people to appeal to the body that will be dominated by industry people. What kind of transparency is that? If I've got five people who vote—there are nine people on the board and five of them are from the industry, and the industry decides they want to go a certain way, where's the protection for seniors there? They're outvoted. It's almost like being on committee: five Liberals, two Con-

servatives and one NDP. We've got as much chance as a hole in the wall.

So I'm wondering how you can say that you think that's transparent. If you have a third party that doesn't deal with a dominated board, then you might have an opportunity to say that it's transparent. I can't believe you can't see the forest for the trees. Unbelievable.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote if there are no further comments. Those in favour of NDP motion 37.1, recorded.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 88 carry? Carried.

Shall sections 89 to 92 carry? Carried.

Section 93, NDP motion 37.2. Mr. Miller?

Mr. Paul Miller: I move that subsection 93(1) of the bill be amended by striking out "authority" and substituting "minister".

This eliminates the reference to the authority, replacing it with the minister.

The Chair (Mr. Shafiq Qaadri): Thank you for your comments. Mr. Dhillon?

Mr. Vic Dhillon: The arm's-length regulatory model that has been created is appropriate to regulate a sector the government doesn't fund. This amendment would in fact change that. We do not support changing the authority from being an arm's-length regulatory authority to being part of the government.

The Chair (Mr. Shafiq Qaadri): Thank you. If there are no further comments, we'll proceed to the recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 93 carry? Carried.

Section 94, NDP motion 37.3. Mr. Miller?

Mr. Paul Miller: I move that subsection 94(3) of the bill be amended by striking out, once again, the word "authority" and substituting "minister".

Same as the above.

The Chair (Mr. Shafiq Qaadri): Comments? We'll proceed to the vote. Those in favour of NDP motion 37.3?

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 94 carry? Carried.

Block consideration: Shall sections 95 to 106, inclusive, carry? Carried.

Section 107, NDP motion 37.4. Mr. Miller?

Mr. Paul Miller: I move that section 107 of the bill be amended by striking out, once again, the word "authority" and substituting "minister".

The Chair (Mr. Shafiq Qaadri): Those in favour of NDP motion 37.4? Recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 107 carry? Carried.

Block consideration of sections 108 and 109. Shall they carry? Carried.

Section 110, NDP motion 37.5. Mr. Miller?

Mr. Paul Miller: I move that section 110 of the bill be amended by striking out the word "authority" wherever that expression appears and substituting in each case "minister".

The Chair (Mr. Shafiq Qaadri): All those in favour of NDP motion 37.1?

Mr. Paul Miller: It's 37.5, isn't it?

The Chair (Mr. Shafiq Qaadri): Sorry, 37.5.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 110 carry? Carried.

Block consideration: Shall sections 111 and 112 carry? Carried.

Section 113, NDP motion 37.6. Mr. Miller?

Mr. Paul Miller: I move that subsection 113(2) of the bill be struck out and the following substituted:

"Health numbers

"(2) Despite subsection 34(2) of the Personal Health Information Protection Act, 2004, inspectors, the minister

and the minister's employees, appointees and agents may collect and use health numbers for purposes related to the minister's duties or powers."

The reason for this is it eliminates the reference to "authority," replacing it with "minister," as we've stated before.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of NDP motion 37.6? Recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.
NDP motion 37.7: Mr. Miller.

Mr. Paul Miller: I move that subsection 113(3) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Disclosure

"(3) The minister and the minister's employees and agents shall preserve secrecy with respect to any information, including personal information and personal health information, obtained in performing a duty or exercising a power under this act and shall not communicate the information to any person except,"

This, once again, eliminates the reference to "authority" and replaces it with "minister."

The Chair (Mr. Shafiq Qaadri): Thank you. If there are no further comments, we'll proceed to the recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.
Shall section 113 carry? Carried.

Block consideration of sections 114 to 117, inclusive:
Shall they carry? Carried.

Section 118. NDP motion 37.8: Mr. Miller.

Mr. Paul Miller: I move that section 118 of the bill be amended by striking out "authority" and substituting "minister".

The Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 118 carry? Carried.

Shall section 119 carry? Carried.

Section 120, NDP motion 37.9.

Mr. Paul Miller: I move that section 120 of the bill be struck out and the following substituted:

"Review of act

"120(1) Within three years after this section comes into force and at least every five years after that, the minister shall undertake a comprehensive review of this act in consultation with all persons and entities that to the knowledge of the minister are affected by this act and shall prepare a report setting out the findings of the review.

"Publication and tabling in assembly

"(2) The minister shall make the report available for public inspection and shall deliver the report to the Speaker of the assembly, who shall lay the report before the assembly at the earliest reasonable opportunity.

"Public consultation before making regulations

"120.1 Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 121 unless,

"(a) the minister has published a notice of the proposed regulation in the Ontario Gazette and given notice of the proposed regulation by all other means that the minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;

"(b) the notice complies with the requirements of this section;

"(c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2)(b) or (c), have expired; and

"(d) the minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2)(b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the minister considers appropriate.

"Contents of notice

"(2) The notice mentioned in clause (1)(a) shall contain,

"(a) a description of the proposed regulation and the text of it;

"(b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the minister and the manner in which and the address to which the comments must be submitted;

"(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

"(d) a statement of where and when members of the public may review written information about the proposed regulation;

"(e) all prescribed information; and

“(f) all other information that the minister considers appropriate.

“Time period for comments

“(3) The time period mentioned in clauses (2)(b) and (c) shall be at least 60 days after the minister gives the notice mentioned in clause (1)(a) unless the minister shortens the time period in accordance with subsection (4).

“Shorter time period for comments

“(4) The minister may shorten the time period if, in the minister’s opinion,

“(a) the urgency of the situation requires it;

“(b) the proposed regulation clarifies the intent or operation of this act or the regulations; or

“(c) the proposed regulation is of a minor or technical nature.

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“Discretion to make regulations

“(5) Upon receiving the minister’s report mentioned in clause (1)(d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the minister’s report.

“No public consultation

“(6) The minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 121 if, in the minister’s opinion,

“(a) the urgency of the situation requires it;

“(b) the proposed regulation clarifies the intent or operation of this act or the regulations; or

“(c) the proposed regulation is of a minor or technical nature.

“Same

“(7) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 121,

“(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

“(b) the minister shall give notice of the decision to the public and to the commissioner as soon as is reasonably possible after making the decision.

“Contents of notice

“(8) The notice mentioned in clause (7)(b) shall include a statement of the minister’s reasons for making the decision and all other information that the minister considers appropriate.

“Publication of notice

“(9) The minister shall publish the notice mentioned in clause (7)(b) in the Ontario Gazette and give the notice by all other means that the minister considers appropriate.

“Temporary regulation

“(10) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 73 because

the minister is of the opinion that the urgency of the situation requires it, the regulation shall,

“(a) be identified as a temporary regulation in the text of the regulation; and

“(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force.

“No review

“(11) Subject to subsection (12), neither a court, nor the registrar, nor the complaints review officer shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

“Exception

“(12) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the minister has not taken a step required by this section.

“Time for application

“(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

“(a) the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), where applicable; or

“(b) the regulation is filed, if it is a regulation described in subsection (10).”

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller.

Mr. Paul Miller: Now, an explanation: A five-year initial review is far, far too late. This needs to be changed. There’s no obligation for consultation in the drafting of these regulations. Given the fact that the government did not consult with the appropriate stakeholder groups in the drafting of this legislation, and given the huge inadequacies of this legislation, as we’ve learned in committee hearings, this is the basic and minimum standard to make sure that regulations are appropriate. This streamlines—tightens up—any possibility of problems with the regulations.

I don’t know why you wouldn’t have taken this advice. It’s sound advice; it’s researched advice; it’s good advice, and it would be absolutely unconscionable if you turned down this amendment.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Dhillon.

Mr. Vic Dhillon: Five-year review: The policy decision was taken to require a review of the act, to be undertaken within five years, to ensure the authority had some experience with which to compare and review.

Consultation on regulations: We support the intention of this motion and will introduce a government motion to clarify the government’s intention concerning consultations during regulation development. So we will not be in support of this.

Mr. Paul Miller: So you’re telling me that it has merit and you’re going to come out with further amend-

ments to this, or are you saying that you're just not supporting this? Did you even—

Mr. Vic Dhillon: We support the intent of this. We will be coming—

Mr. Paul Miller: So you do support it.

Mr. Vic Dhillon: Exactly.

Mr. Paul Miller: You do support it, but you're going to come out with your own. Is that what you're saying?

Mr. Vic Dhillon: The intent, with some additions.

Mr. Paul Miller: So are you saying that you're accepting the whole body of this recommendation or just the parts that suit you?

Mr. Vic Dhillon: No, we're not. No.

Mr. Paul Miller: So you're going to do your own, is what you're saying.

Mr. Vic Dhillon: Well, we'll have a better amendment.

Mr. Paul Miller: You won't have a better one, but you'll do your own.

Okay, I'm against—I'm voting for this one.

The Chair (Mr. Shafiq Qaadri): We'll proceed now to the vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, McMeekin, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 120 carry? Carried.

Section 121. NDP motion 37.10: Mr. Miller.

Mr. Paul Miller: I move that paragraph 21 of subsection 121(1) of the bill be struck out.

Once again, I believe that this is a housekeeping motion. I don't know why you'd have a problem with it. I'm double-checking this with the legislative counsel. Is that correct?

Mr. Michael Wood: Well, it does confer some substantive power in regulation. It's a power of the LG in C to make a regulation to specify what provisions of the Health Care Consent Act are to apply to retirement homes. If you take out this power, then you couldn't adapt the provisions of the Health Care Consent Act as they apply to retirement homes.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon.

Mr. Vic Dhillon: I believe the government motion should be the next one, 37.9.1.

Mr. Paul Miller: I don't have it. Sorry.

The Chair (Mr. Shafiq Qaadri): What number are you quoting, Mr. Dhillon?

Mr. Paul Miller: He said 37.9.1. I don't have it. It's not even on my list.

Mr. Vic Dhillon: Motion 37.9.1?

Mr. Paul Miller: It's not on my list. Sorry, you missed the boat.

Mr. Vic Dhillon: Chair, can we have a five-minute recess?

The Chair (Mr. Shafiq Qaadri): Can they have a five-minute recess—

Mr. Paul Miller: No, I don't agree with that—no. If you don't have it here—we don't have it. We can't deal with something we don't have.

The Chair (Mr. Shafiq Qaadri): I'm informed the committee needs to recess to get the photocopies etc. So yes, a five-minute recess is now in force.

The committee recessed from 1447 to 1450.

The Chair (Mr. Shafiq Qaadri): We resume with NDP motion 37.10. I believe it's already been read into the record. Are there any further comments on it? We'll proceed to the vote on NDP motion 37.10, a recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

NDP motion 37.11: Mr. Miller?

Mr. Paul Miller: I move that the following provisions of subsection 121(1) of the bill be amended by striking out "authority" wherever that expression appears and substituting in each case "minister": subparagraph 32ii and paragraphs 33 and 36.

The Chair (Mr. Shafiq Qaadri): Comments? From any side? We'll proceed then to the recorded vote.

Ayes

Paul Miller.

Nays

Dhillon, Jaczek, Mangat, Rinaldi.

The Chair (Mr. Shafiq Qaadri): Defeated.

Shall section 121 carry? Carried.

Section 121.1, new section, government motion 37.12. Mr. Dhillon?

Mr. Vic Dhillon: I move that the bill be amended by adding the following section in part VII:

"Public consultation before making initial regulations

"121.1(1) The Lieutenant Governor in Council shall not make the initial regulation with respect to any matter about which the Lieutenant Governor in Council may make regulations under this act unless,

"(a) the minister has published a notice of the proposed regulation on the website of the ministry of the minister and in any other format the minister considers advisable;

“(b) the notice complies with the requirements of this section;

“(c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2)(b) or (c), have expired; and

“(d) the minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2)(b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the minister considers appropriate.

“Contents of notice

“(2) The notice mentioned in clause (1)(a) shall contain,

“(a) a description of the proposed regulation and the text of it;

“(b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the minister and the manner in which and the address to which the comments must be submitted;

“(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

“(d) a statement of where and when members of the public may review written information about the proposed regulation; and

“(e) all other information that the minister considers appropriate.

“Time period for comments

“(3) The time period mentioned in clauses (2)(b) and (c) shall be at least 30 days after the minister gives the notice mentioned in clause (1)(a) unless the minister shortens the time period in accordance with subsection (4).

“Shorter time period for comments

“(4) The minister may shorten the time period if, in the minister’s opinion,

“(a) the urgency of the situation requires it;

“(b) the proposed regulation clarifies the intent or operation of this act or the regulations; or

“(c) the proposed regulation is of a minor or technical nature.

“Discretion to make regulations

“(5) Upon receiving the minister’s report mentioned in clause (1)(d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the minister’s report.

“No public consultation

“(6) The minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under this act if, in the minister’s opinion,

“(a) the urgency of the situation requires it;

“(b) the proposed regulation clarifies the intent or operation of this act or the regulations; or

“(c) the proposed regulation is of a minor or technical nature.

“Same

“(7) If the minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under this act,

“(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

“(b) the minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision.

“Contents of notice

“(8) The notice mentioned in clause (7)(b) shall include a statement of the minister’s reasons for making the decision and all other information that the minister considers appropriate.

“Publication of notice

“(9) The minister shall publish the notice mentioned in clause (7)(b) on the website of the ministry of the minister and give the notice by all other means that the minister considers appropriate.

“No review

“(10) Subject to subsection (11), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

“Exception

“(11) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the minister has not taken a step required by this section.

“Time for application

“(12) No person shall make an application under subsection (11) with respect to a regulation later than 21 days after the day on which the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), if applicable.”

The explanation for this amendment is that after consultations on regulations, we’re introducing a government motion in response to stakeholders’ concerns and to confirm the government’s intent to consult on the initial regulations developed under this act. This reflects the feedback from stakeholders, and this consultation provision is consistent with the Long-Term Care Homes Act’s approach to consultation. This provision would include a notice of a proposed regulation on the ministry’s website, a description of the proposed regulation as well as the text of the regulation and provide at least a 30-day comment period for the members of the public to offer comment, with a few limited exceptions.

The Chair (Mr. Shafiq Qadri): Thank you. Comments? If there are none, we’ll proceed, then, to the vote. Those in favour of government motion 37.12? Those opposed? Motion 37.12 carries.

Shall section 121.1, as amended, carry? Carried.

Block consideration of sections 122 to 124: Carry? Carried.

We’ll proceed now to section 125, NDP motion 39.1.

Mr. Paul Miller: Has 39 been withdrawn?

The Chair (Mr. Shafiq Qaadri): Yes, PC motion 39 has been withdrawn. We are now proceeding to section 125, NDP motion 39.1.

Mr. Paul Miller: I move that the bill be amended by adding the following section:

“Coroners Act

“125.1(1) Subsection 10(2.1) of the Coroners Act, as it read on the day before the Long-Term Care Homes Act, 2007 received royal assent, is amended by striking out ‘or a nursing home to which the Nursing Homes Act applies’ and substituting ‘a nursing home to which the Nursing Homes Act applies or a retirement home to which the Retirement Homes Act, 2010 applies’.

“(2) Subsection (1) applies only if section 208 of the Long-Term Care Homes Act, 2007 does not come into force before this subsection comes into force.

“(3) Subsection 10(2.1) of the Coroners Act, as it will read on the day section 208 of the Long-Term Care Homes Act, 2007 comes into force, is amended by adding ‘or a retirement home to which the Retirement Homes Act, 2010 applies’ after ‘the Long-Term Care Homes Act, 2007 applies’.

“(4) Subsection (3) applies only if section 208 of the Long-Term Care Homes Act, 2007 comes into force.”

The Chair (Mr. Shafiq Qaadri): Mr. Miller, I’m required to read to you this exceptionally eloquent ruling by the Chair, which reads as follows:

Committee members, I would like to rule on the admissibility of this amendment that proposes to amend a section—

Mr. Paul Miller: I’m sorry, could you slow down? What’s this about?

The Chair (Mr. Shafiq Qaadri): Committee members, I would like to rule on the admissibility of this amendment that proposes to amend a section to a parent act that is not before the committee. I therefore rule this motion out of order.

If you need clarification, I’m happy to allow legislative counsel to do so.

Mr. Paul Miller: Yes, I’d like legislative counsel to send an explanation, please. Could I have a hard copy sent to my office, please, the explanation of why it doesn’t apply? I’d like it in writing.

Mr. Michael Wood: I understand that the Chair of committee will give you the hard copy of his ruling. I can assist in explaining what the ruling says.

By parliamentary precedent, it is not in order to move a motion to amend an act which is not already being amended in a bill unless you get unanimous consent of the committee.

Mr. Paul Miller: Can I get that in writing, your explanation?

Mr. Michael Wood: It’s not my ruling. It’s a ruling of the Chair, and the Chair will send you that in writing.

Mr. Paul Miller: Can I get it in writing, please?

The Chair (Mr. Shafiq Qaadri): Yes, we will do so, Mr. Miller.

We’ll now proceed. That motion is essentially out of order. We’ll proceed directly to the vote, unless there are any other comments on section 125. Seeing none, we’ll proceed to the vote. Shall section 125 carry? Carried.

Block consideration: Shall sections 126 to 129 carry? Carried.

Shall the title carry? Carried.

Shall Bill 21, as amended, carry? Carried.

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

If there’s no further business before the committee, I thank you for your patience, endurance and whatever other personal qualities you required to get through this particular clause-by-clause consideration. The committee is now adjourned.

The committee adjourned at 1500.

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